False Light and the Misattribution Interest

Cameron C. McCulloch

Draft as of May 19, 2026

False light invasion of privacy is a tort with a troubled history. First named by William Prosser and codified at § 652E of the Second Restatement of Torts, false light has long been criticized as a tort without a coherent account of the interest it protects — either shadow defamation, on the standard charge, or an apparition. John Goldberg and Benjamin Zipursky have recently offered a promising defense of the tort, reconstructing false light as a "pseudo-disclosure" privacy tort. Their framework succeeds for one class of cases but filters out another the tort has historically covered: the falsely identified political supporter, the publicly mischaracterized critic, the subject of a flattering but fabricated biography. This Article identifies the interest those cases vindicate: the misattribution interest; the interest against being publicly associated with characteristics, views, works, or affiliations that are not one's own. Misattribution is irreducible to privacy, reputation, or emotional distress, and it explains why false light is gaining importance in an era of deepfakes and other synthetic media.

Table of Contents

INTRODUCTION 2

I. THE PROBLEM 6

A. False Light: A Brief History of a Troubled Tort 6
1. Origins and the Restatement. 6
2. Critique and Rejection. 9
B. Goldberg and Zipursky's Repatriation 11
1. The Pseudo-Disclosure Theory. 11
2. The "If True" Test. 13
C. What the "If True" Test Eliminates 15
1. The Eliminated Cases. 15
2. The Gap. 19
3. The Disease, Victimization, and Sexual Orientation Cases. 20

II. THE MISATTRIBUTION INTEREST 21

A. Privacy, Self-Presentation, and Misattribution 21
1. Goldberg and Zipursky's Own Formulation — and Its Tension. 21
2. The Self-Presentation Fork: Marmor vs. Véliz. 22
3. The Misattribution Interest Defined. 24
B. Grounding the Interest: Authorial Control over Public Identity .. 25
C. The Framework Applied 28

III. OBJECTIONS AND IMPLICATIONS 30

A. The First Amendment Objection 30

1. The Objection Stated. 30
2. The Constitutional Architecture Already in Place. 30
3. Fact, Opinion, and Hard Cases 32
4. The Compelled Speech Analogy. 34
5. Triviality and Limiting Principles. 35
B. The Defamation-Absorbs-Misattribution Objection 37
1. The Objection Stated. 37
2. Why Expansion Distorts Defamation. 37
3. Authorial Control Is Not Reputation. 39
C. The Misattribution-Absorbs-Defamation Objection 40
1. The Objection Stated. 40
2. Why Misattribution Does Not Absorb Defamation. 40
3. The Pleading Choice Worry, Bounded. 41
D. The Misattribution-Absorbs-Pseudo-Disclosure Objection 42
1. The Objection Stated. 42
2. Why Misattribution Does Not Absorb Pseudo-Disclosure. 42
3. Overlap and Its Doctrinal Consequences. 43
E. Implications 43
1. For Courts Retaining False Light. 43
2. For Courts That Have Abolished False Light. 44
3. Urgency in the Era of Deepfakes. 45
CONCLUSION 46

INTRODUCTION

In 1967, the New York Court of Appeals decided *Spahn v. Julian Messner, Inc.*[1] Warren Spahn was a renowned left-handed pitcher and a Hall of Famer. A publisher had released a biography of him — aimed at children, laudatory in tone — that was also, in large part, fiction. The book awarded Spahn a Bronze Star he had not earned, and placed him in wartime scenes where he had never been, "racing out of his bunker in the teeth of the enemy's barrage."[2] It fabricated a romantic reunion with his wife upon his return from the war — she had not swept him into her arms at the door; he had called from the train station, and she had met him there.[3] It invented a

[1] *Spahn v. Julian Messner, Inc.*, 21 N.Y.2d 124 (1967). The case had an unusual procedural history: the Court of Appeals first ruled in Spahn's favor in 1966, *see Spahn v. Julian Messner, Inc.*, 18 N.Y.2d 324 (1966), but the U.S. Supreme Court vacated and remanded for reconsideration in light of *Time, Inc. v. Hill*, 385 U.S. 374 (1967). *See Julian Messner, Inc. v. Spahn*, 387 U.S. 239 (1967) (per curiam). On remand, the Court of Appeals reaffirmed liability. 21 N.Y.2d at 126.

[2] *See* Gary T. Schwartz, *Explaining and Justifying a Limited Tort of False Light Invasion of Privacy*, 41 CASE W. RES. L. REV. 885, 896 (1991) (describing the biography's fabricated war record); *Spahn v. Julian Messner, Inc.*, 43 Misc. 2d 219, 228 (N.Y. Sup. Ct. 1964).

[3] *See Spahn*, 43 Misc. 2d at 229–30.

formative relationship with his father and created dialogue that had never been spoken.[4] None of it was defamatory. Making Spahn look more heroic than he was did not damage his reputation — it enhanced it. None of it disclosed private facts: his military service was a matter of public record, and the details were invented wholesale. Yet the court found liability.

The question *Spahn* leaves open must be asked more carefully: what interest was being protected? Not reputation — the book flattered Spahn. Not the interest in keeping private facts private — there were no private facts disclosed, only fabrications constructed. Something else was at stake. The Appellate Division gestured toward it — Spahn should not "be exposed, without his control, to biographies not limited substantially to the truth"[5] — but the gesture is more intuition than theory. What is the interest in not being depicted, falsely, as more heroic than you are? Why does a person have a cognizable legal interest in not being associated with deeds, characteristics, or words that are not theirs, even when the association is flattering?

The question is not merely historical. In 2016, the *National Enquirer* ran a front-page story falsely reporting that Richard Simmons had transitioned from male to female.[6] Simmons sued for defamation and false light and lost both. The defamation ruling is defensible: the court declined to treat transgender identity as a characteristic that damages reputation. The false light ruling is harder to justify. Whatever one thinks of the reputational question, Simmons was publicly associated with a gender identity that was not his — a wrong structurally identical to the wrong in *Spahn*. The attributed characteristic was not shameful, not private, not newsworthy. It was simply not his.

And the problem is accelerating. Just this year, dozens of YouTube channels were found impersonating University of Chicago political scientist John Mearsheimer, using AI-generated video and cloned audio to put fabricated geopolitical commentary in his mouth — in English, Mandarin,

---

[4] *See id.* at 232. The trial court found "a … preponderant percentage of factual errors, distortions and fanciful passages." The biography's author had never interviewed Spahn, any member of his family, or any baseball player who knew him; his research amounted to little more than newspaper and magazine clippings. *Spahn*, 21 N.Y.2d at 128; *see also Spahn*, 23 A.D.2d at 219 (noting defendants "made no effort and had no intention to follow the facts concerning plaintiff's life, except in broad outline").

[5] *Spahn*, 23 A.D.2d at 221.

[6] *See* Rodney A. Smolla, *Ethical Complexities in Defamation and False Light Claims*, 20 GEO. J.L. & PUB. POL'Y 1009, 1009–11 (2022) (describing the article, the filing of defamation and false light claims in *Simmons v. American Media, Inc.*, No. BC660633 (Cal. Super. Ct. L.A. Cty. Sept. 1, 2017), and Smolla's role as Simmons's co-counsel). Smolla argues that whatever the merits of the defamation holding, the false light claim should have been permitted to proceed independently. *Id.* at 1028–31. *See also* Clay Calvert, Ashton T. Hampton & Austin Vining, *Defamation Per Se and Transgender Status: When Macro-Level Value Judgments About Equality Trump Micro-Level Reputational Injury*, 85 TENN. L. REV. 1029 (2018) (offering a more ambivalent account of the defamation ruling).

and Spanish — across hundreds of videos and hundreds of thousands of subscribers.[7]

In *A Tort for the Digital Age*, John Goldberg and Benjamin Zipursky argue that false light has been persistently mischaracterized — as either a subspecies of defamation or a tort for emotional distress — and that both characterizations have distorted its development.[8] The correct account, they contend, treats false light as a sibling of public disclosure of private facts. Drawing on Melville Nimmer's underappreciated insight, Goldberg and Zipursky observe that if widespread dissemination of true private information wrongs a person, it should wrong them no less when the putative "information" is false.[9] False light, on this account, is what happens when someone does with a fabrication what public disclosure does with a fact.

The framework is useful and compelling. It explains why false light belongs in the privacy family rather than the defamation family, and it supplies a precise account of the injury: false light is grounded in "persons' interest in how the public perceives and feels about them, and their control over such public perceptions."[10] But the framework also generates a filter that Goldberg and Zipursky acknowledge without fully reckoning with. Their argument implies what this Article calls the "if true" test: false light should be limited to cases where, if the false statement were true, the plaintiff would have a valid public-disclosure claim.[11] Cases that fail the test — where the attributed characteristic, if true, would disclose nothing private — fall outside false light's domain as Goldberg and Zipursky reconceive it.

---

[7] *See* John J. Mearsheimer, *My Fake AI Problem*, MEARSHEIMER'S SUBSTACK (Feb. 5, 2026), https://perma.cc/VX7H-AS66 ("I have a significant problem with people posting fake AI videos of me on the internet, some of which are so good that people who know me well do not realize they are watching a fake. In some cases, those videos have me saying things that I never said and would not say."; noting that "others like Jeff Sachs, Yanis Varoufakis, and Victor Davis Hanson have the same problem," and describing takedown efforts as "playing whack a mole"). *See also* Maldita.es, *A Network of 15 YouTube Channels with over 200 Deepfakes of Professor John Mearsheimer: How AI Is Being Used to Impersonate Political Analysts*, MALDITA.ES INVESTIGACIONES (Feb. 12, 2026), https://perma.cc/EFX6-REKW (independent investigation identifying fifteen YouTube channels using HeyGen to fabricate videos of Mearsheimer and other analysts, with more than 200 videos and 170,000 subscribers as of publication; Mearsheimer's team located forty-three such channels in total, of which YouTube removed forty-one).

[8] John C.P. Goldberg & Benjamin C. Zipursky, *A Tort for the Digital Age: False Light Invasion of Privacy Reconsidered*, 73 DEPAUL L. REV. 461, 463–66 (2024).

[9] *Id.* at 471–72 (developing Nimmer's argument). *See* Melville B. Nimmer, *The Right to Speak from Times to Time: First Amendment Theory Applied to Libel and Misapplied to Privacy*, 56 CAL. L. REV. 935, 961–64 (1968).

[10] Goldberg & Zipursky, *supra* note 8, at 476.

[11] *Id.* at 481. Goldberg and Zipursky do not use this label, but the test follows from their argument that false light covers "matters that are genuinely private, offensive when publicly disseminated, and not newsworthy."

They recognize the implication. Had the Restatement drafters been more rigorous, they write, those drafters "probably would have omitted some of its illustrations, such as the example based on Lord Byron's case . . . It may well be an injurious wrong falsely to attribute a terrible poem to a renowned poet. Less clear is that this wrong consists of interfering with the poet's interest in not having members of the public form beliefs about certain sensitive matters pertaining to the poet's private life."[12] In other words, the Byron case fails the "if true" test: if the terrible poem were genuinely Byron's, its publication would disclose nothing about his private life. Cases like *Spahn* sit in the same position. If Spahn really had earned a Bronze Star, publication of that fact would have been unobjectionable news about a public figure — nothing private, nothing protectable under public disclosure.

Goldberg and Zipursky are right that these cases are not privacy torts. But that does not make them nobody's business. What the "if true" test correctly identifies as outside *privacy's* domain is not outside the law's domain.

The thesis of this Article is as follows. Goldberg and Zipursky's "if true" test correctly identifies which false light cases are genuine privacy cases, and their analysis of false light as a pseudo-disclosure tort is, within those bounds, plausible. But the test also eliminates a distinct and legitimate interest that false light doctrine has historically protected — one that deserves independent recognition and elucidation. That interest could be called the *misattribution interest*: the interest against having characteristics, views, works, or affiliations publicly attributed to you that are not yours. The misattribution interest is not reducible to privacy, reputation, or emotional distress, though it is often related to all three. This Article identifies its grounds, argues that it survives the strongest objections, and shows that recognizing it clarifies both the structure of privacy tort law and the categories of harm that will matter increasingly in an era of deepfakes and synthetic media.[13]

False light, on this account, has been doing two different kinds of work under a single doctrinal label, sometimes in the same case.[14] The question is

---

[12] *Id.* at 474.

[13] "Synthetic media" refers to audio, video, or images generated or substantially altered by artificial intelligence — of which deepfakes are the most prominent current example. The term was nearly absent from public discourse before late 2024; search interest in it rose sharply from that point, climbing toward parity with "deepfake" by 2026. *See* Google Trends, https://perma.cc/58HM-U72S (search interest in "synthetic media," worldwide web search, 2004 to present; flat baseline through mid-2023, sharp inflection in late 2024, steep continued rise through 2026).

[14] *See* Samuel L. Bray, *On Doctrines That Do Many Things*, 18 GREEN BAG 2D 141, 141 (2015) (distinguishing multi-function legal doctrines, which serve multiple purposes, from single-function doctrines designed to do one thing well). The standard scholarly response to multi-function doctrines is to argue for their replacement with narrower alternatives. *See id.* at 141–43. This Article argues the better response is to articulate the distinct functions clearly. *Cf. id.* at 148–49 (observing that judges have resisted scholarly projects of deconstruction and that multi-function doctrines have their own parsimony). Part III.D below takes up the question whether the misattribution interest should be understood as the singular function of false light, much as Goldberg and Zipursky describe pseudo-disclosure

whether to acknowledge that the doctrine has been serving two functions, sometimes singly and sometimes together, and what follows from that acknowledgment. This Article's working hypothesis is that the multi-function structure is worth preserving — that Goldberg and Zipursky are right that the privacy function is legitimate, and that the misattribution function should sit alongside it rather than displace it. Part III.D defends that hypothesis against the alternative under which the misattribution interest would itself absorb the pseudo-disclosure cases.

The Article proceeds in three Parts. Part I identifies the problem: it traces false light's doctrinal history, extracts the "if true" test from Goldberg and Zipursky's analysis, and walks through the cases the test eliminates. Part II names and grounds the misattribution interest, distinguishing it from privacy and locating it in the plaintiff's interest in authorial control over the public identity through which others encounter her. Part III defends the framework against the First Amendment objection and against three absorption objections — that defamation absorbs misattribution, that misattribution absorbs defamation, and that misattribution absorbs the pseudo-disclosure cases — and draws out implications for courts retaining false light, for jurisdictions that have eliminated the tort, and for the deepfake era.

The misattribution interest is neither a doctrinal antique nor a revisionist proposal. It is a name for an interest courts have long sensed without quite identifying — and that, brought into view, turns out to be both more common than it first appeared and almost certain to grow more common still.

I. The Problem

A. False Light: A Brief History of a Troubled Tort

1. Origins and the Restatement.

In 1960, William Prosser — Dean of the University of California Berkeley School of Law at the time — published an article that attempted to impose order on seven decades of privacy litigation.[15] Surveying over three hundred cases decided since Warren and Brandeis's foundational article,[16] Prosser concluded that what had emerged was not one tort, but a complex of four, "comprising four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common."[17] The four torts were intrusion upon seclusion, public disclosure of embarrassing private facts, publicity placing the plaintiff in a false light in the public eye, and appropriation of name or likeness.[18]

---

privacy as its singular function. This Article does not resolve that question; it identifies the zone of overlap and leaves the choice of doctrinal vehicle to courts.

[15] William Prosser, *Privacy*, 48 CAL. L. REV. 383 (1960).

[16] *See* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

[17] Prosser, *supra* note 15, at 389.

[18] *Id.*

Prosser observed that the four torts do not all protect the same thing. "Taking them in order — intrusion, disclosure, false light, and appropriation — the first and second require the invasion of something secret, secluded or private pertaining to the plaintiff; the third and fourth do not."[19] False light, in other words, was not a privacy tort in the ordinary sense from the beginning. Prosser himself recognized that it did not require the invasion of anything private.

He traced false light's origins to 1816, when Lord Byron obtained an injunction against the circulation of a "spurious and inferior poem attributed to his pen."[20] The earliest false light cases involved "publicity falsely attributing to the plaintiff some opinion or utterance" — fictitious testimonials used in advertising, names signed without authorization to political petitions, and spurious books or articles purporting to express the plaintiff's views.[21] A second category involved photographs used out of context — an innocent citizen's face employed

> to ornament an article on the cheating propensities of taxi drivers, the negligence of children, profane love, 'man hungry' women, juvenile delinquents, or the peddling of narcotics . . . which places him in a false light before the public, and is actionable.[22]

What interest did these cases protect? Prosser seemed ambivalent. On the one hand, he classified false light as a privacy tort. On the other, he characterized the interest as "clearly that of reputation, with the same overtones of mental distress as in defamation."[23] He saw false light as "in reality an extension of defamation, into the field of publications that do not fall within the narrow limits of the old torts."[24] Prosser's account leaves false light in an unstable position between defamation and privacy, generating sixty years of doctrinal struggle to assimilate the tort to one or eliminate it altogether.[25]

Seven years after Prosser's article, the Supreme Court decided *Time, Inc. v. Hill*.[26] The Hill family had been held hostage in their home for nineteen hours by escaped convicts who, as it happened, treated them courteously (as courteously as one can treat a hostage, we must suppose).[27] A novel, a Broadway play, and eventually a *Life* magazine article depicted the ordeal as

---

[19] *Id.* at 407.

[20] *Id.* at 398; *see Lord Byron v. Johnston*, 35 Eng. Rep. 851.

[21] Prosser, *supra* note 15, at 398. *See also* John H. Wigmore, *The Right Against False Attribution of Belief or Utterance*, 4 KY. L.J. 3 (1916) (collecting early instances).

[22] Prosser, *supra* note 15, at 399.

[23] *Id.* at 400.

[24] *Id.* at 398.

[25] *See* Neil M. Richards & Daniel J. Solove, *Prosser's Privacy Law: A Mixed Legacy*, 98 CAL. L. REV. 1890, 1921–24 (2010) (arguing that Prosser's taxonomy was both "rigid and ossifying" and "stunted" privacy law's development).

[26] *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

[27] *Id.* at 378.

violent — the father and son beaten and the daughter subjected to a verbal sexual insult.[28] The Hills sued under the New York privacy statute, and the Court, in an opinion by Justice Brennan, applied the *New York Times v. Sullivan* actual malice standard to false light claims involving matters of public interest.[29] *Hill* established that false light, like defamation, would be subject to First Amendment constraints. But the case also revealed a problem: the Hills' injury was not that private facts had been disclosed — the hostage-taking was front-page news — but that the published account was fictionalized. The tort was being used to remedy something other than a privacy invasion in any straightforward sense.[30]

In 1974, the Court decided *Cantrell v. Forest City Publishing Co.*, the only Supreme Court case to squarely uphold a false light verdict on the merits.[31] A reporter had visited the home of a family whose father had died in a bridge collapse, and later published an article that fabricated the widow's presence during the visit, invented her words and demeanor, and misrepresented the family's living conditions.[32] The Court upheld the jury's verdict, finding that the actual malice standard was satisfied.[33]

The Restatement (Second) of Torts, adopted in 1977, codified false light as § 652E.[34] The tort has three requirements: (1) the defendant must give "publicity" to a matter concerning the plaintiff — a stricter standard than defamation's "publication," requiring dissemination to the public at large rather than to a single third party;[35] (2) the publicity must place the plaintiff in a false light that would be "highly offensive to a reasonable person";[36] and (3) the defendant must have acted with knowledge of or reckless disregard for the falsity.[37] The Restatement further specifies that actionable false light involves a "major misrepresentation of [the plaintiff's] character, history, activities or beliefs."[38]

The Restatement includes nine illustrations, and three of them are illuminating for this Article's argument because they do not overlap with defamation. Illustration 4 describes a plaintiff falsely identified as a supporter of a political party in a widely circulated petition.[39] Illustration 5 describes a film about the plaintiff's life that includes a fabricated private life attributed to the plaintiff, including a "non-existent romance" that enhances rather than

---

28 *Id.* at 378–79.

29 *Id.* at 387–88 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964)).

30 *See* Diane Leenheer Zimmerman, *False Light Invasion of Privacy: The Light That Failed*, 64 N.Y.U. L. REV. 364, 385–86 (1989) (arguing that the Court in *Hill* failed to examine the substantiality of the state's interest in false light).

31 *Cantrell v. Forest City Publ'g Co.*, 419 U.S. 245 (1974).

32 *Id.* at 247–48.

33 *Id.* at 253.

34 RESTATEMENT (SECOND) OF TORTS § 652E (Am. L. Inst. 1977).

35 *Id.* cmt. a.

36 *Id.* § 652E(a).

37 *Id.* § 652E(b).

38 *Id.* cmt. c.

39 *Id.* illus. 4.

diminishes the plaintiff's public image.[40] Illustration 9 describes a televised dramatization of a real-life harrowing flight, in which the pilot is portrayed — in scenes the broadcaster knew to be fabricated — as praying and reassuring passengers, in a manner that neither defames him nor reflects badly on him in any way.[41] In none of these cases has the plaintiff's reputation been lowered. In none has a private fact been disclosed. Yet each is treated by the Restatement as actionable false light. These are the illustrations that Goldberg and Zipursky's analysis would "probably" eliminate.[42]

Restatement reporter John Wade characterized the interest protected by false light as primarily one in emotional tranquility. In a privacy action, Wade wrote, "the plaintiff recovers primarily for the emotional distress, but also for the harm to his interest in privacy."[43] This framing differs from both Prosser's reputational characterization and Goldberg and Zipursky's later privacy characterization. False light, then, has been described as protecting at least three different things: reputation (Prosser), emotional tranquility (Wade), and privacy (Goldberg and Zipursky). The lack of consensus about the underlying interest is not a failure of scholarship. It is a sign that the tort was, from the start, protecting more than one thing.[44]

2. Critique and Rejection.

The Restatement's adoption of § 652E would prove to be something of a high point for false light. Within a decade, the countermovement began. In 1984, North Carolina became the first state to formally reject the tort.[45] Other states followed: Texas, Colorado, Virginia, and — most consequentially for the argument of this Article — Florida.[46] In Minnesota, the Supreme Court recognized three of the four privacy torts but declined to

---

40 *Id.* illus. 5.

41 *Id.* illus. 9.

42 Goldberg & Zipursky, *supra* note 8, at 474.

43 John W. Wade, *Defamation and the Right of Privacy*, 15 VAND. L. REV. 1093, 1112 (1962).

44 *Cf.* Schwartz, *supra* note 3 (offering the most sustained defense of false light against abolition, but grounding the defense in emotional distress and the inadequacy of neighboring torts rather than in a theory of the underlying interest); Bryan R. Lasswell, *In Defense of False Light: Why False Light Must Remain a Viable Cause of Action*, 34 S. TEX. L. REV. 149, 176 (1993) (characterizing false light as resting on "an awareness that people who are made to seem pathetic or ridiculous may be shunned, and not just people who are thought to be dishonest or incompetent or immoral," quoting *Douglass v. Hustler Magazine, Inc.*, 769 F.2d 1128, 1134 (7th Cir. 1985)).

45 *Renwick v. News & Observer Publ'g Co.*, 312 S.E.2d 405 (N.C. 1984), *cert. denied*, 469 U.S. 858 (1984).

46 *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 584 (Tex. 1994); *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 904 (Colo. 2002); *WJLA-TV v. Levin*, 564 S.E.2d 383, 394–95 n.5 (Va. 2002); *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1115 (Fla. 2008). For an earlier account of the countermovement, see Schwartz, *supra* note 2, at 886.

adopt false light, expressing concern that "claims under false light are similar to claims of defamation, and to the extent that false light is more expansive than defamation, tension between this tort and the First Amendment is increased."[47]

The scholarly case for abolition was made most forcefully by Diane Zimmerman in 1989. Zimmerman argued that false light was "a conceptually empty tort" that "probably should be stricken from the common law as a cognizable cause of action."[48] Her argument had two prongs. The first was doctrinal: most false light cases overlap with defamation, and the cases that do not overlap involve falsehoods that do not damage reputation — falsehoods for which, in Zimmerman's view, "a convincing reason for limiting their constitutional protection does not exist."[49] The second was constitutional: even if some non-reputational falsehoods were in principle regulable, the false light tort would remain "unworkable" because it chills accurate speech, and the defamation privileges that the Supreme Court grafted onto it in *Hill* are a poor fit for a tort whose core differs from defamation's.[50]

Zimmerman's critique was powerful and identified real problems. But it contained a premise that this Article challenges: that the non-reputational false light cases — the ones that do not overlap with defamation — lack a cognizable interest worth protecting. For Zimmerman, the overlap cases are shadow defamation, and the non-overlap cases are constitutionally unprotectable. If that exhausts the field, then false light is indeed empty. This Article identifies the interest those cases protect and shows that, even if that interest were not cognizable, Zimmerman's two categories would still not exhaust the field.

The courts that followed Zimmerman's lead adopted a characteristic two-step maneuver: reject false light, then expand defamation to absorb whatever the abolished tort had been doing. The clearest illustration is *Jews for Jesus, Inc. v. Rapp*.[51] Edith Rapp, a Jewish woman, was falsely depicted in a Jews for Jesus newsletter as having embraced the organization's views. The Florida Supreme Court rejected false light on the ground that it is "largely duplicative of defamation" and that, "without many of the First Amendment protections attendant to defamation, it has the potential to chill speech without any appreciable benefit to society."[52] But the court simultaneously expanded defamation by adopting the "respectable minority" test: a statement is defamatory if it would lower the plaintiff's standing in the eyes of a "substantial and respectable minority" of the community, rather than requiring lowered standing in the community at large.[53]

---

[47] *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 235 (Minn. 1998).

[48] Zimmerman, *supra* note 30, at 369, 370.

[49] *Id.* at 370.

[50] *Id.*

[51] *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008).

[52] *Id.* at 1105.

[53] *Id.* at 1115; see also RESTATEMENT (SECOND) OF TORTS § 559 (Defamatory Communication Defined), cmt. e.

The maneuver in *Rapp* repays close attention, because it exposes the structural problem this Article addresses. The Florida court needed the expanded defamation standard precisely because Rapp's claim did not fit classical defamation. Being associated with Jews for Jesus does not lower one's reputation among the "average person" — it is not defamatory in the traditional sense. It is, however, a serious misattribution of religious affiliation. To reach the case, the court had to stretch defamation beyond its historical core: the protection of reputation from falsehoods that make the community think less of the plaintiff. The "respectable minority" test does this work, but at a cost. If defamation can reach any false statement that would lower the plaintiff's standing in *some* subcommunity's eyes, the tort loses the limiting principle — reputation-lowering in the community at large — that has historically constrained it.[54]

This Article's claim is that the *Rapp* problem goes to the design of the torts themselves, not to a minor drafting gap, or just some ill-conceived illustrations added to the Second Restatement.[55] Courts that abolish false light and expand defamation are not patching a minor gap; they are distorting one tort to do the work of another. The distortion is necessary because the abolished tort was protecting an interest that defamation was not designed to reach. Identifying that interest — rather than continuing to stretch defamation — is the task of the remaining Parts.

B. Goldberg and Zipursky's Repatriation

1. The Pseudo-Disclosure Theory.

Against this background of doctrinal confusion and scholarly skepticism, Goldberg and Zipursky attempt to repatriate false light — to return it to the privacy family in which Prosser first placed it, but from which his own ambivalence about its nature quickly dislodged it. Their effort is not merely taxonomic. In arguing that false light belongs in the privacy camp, they articulate a distinctive account of what it protects that marks a genuine advance over prior treatments. Their central claim is that false light is neither a reputational-injury tort nor an emotional-distress tort. It is a genuine privacy tort — the "pseudo-disclosure" sibling of public disclosure of private fact.[56]

---

[54] *See* Kenneth W. Simons, *Defamatory in Whose Eyes?*, 4 J. FREE SPEECH L. 761, 762–63 (2024) (analyzing the difficulty of identifying the relevant "community" for defamation and arguing for a descriptive, subcommunity-focused approach); Lyrissa Barnett Lidsky, *Defamation, Reputation, and the Myth of Community*, 71 WASH. L. REV. 1, 1–2 (1996) (arguing that defamation law presupposes a cohesive community with shared norms — a "myth" in a heterogeneous society).

[55] The last of these possibilities is explicitly suggested by Goldberg & Zipursky at 474.

[56] Goldberg & Zipursky, *supra* note 8, at 461–62, 470–76.

The argument builds on an insight first articulated by Melville Nimmer in 1968. Nimmer observed:

> [A young lady] whose nude photo is published would be no less offended if it turned out that her face were superimposed upon someone else's nude body. The resulting humiliation would have nothing to do with truth or falsity. The unwarranted disclosure of intimate "facts" is no less offensive and hence no less deserving of protection merely because such "facts" are not true.[57]

The core of Nimmer's argument is a conditional: If public disclosure of private facts is wrongful due to the invasion of the plaintiff's interest in controlling what the public knows about her private life, then it is equally wrongful when the disseminated "facts" are fabricated.[58] If publishing a real nude photograph wrongs someone, publishing a convincing fake wrongs them in the same way and for the same reason.

Goldberg and Zipursky develop this insight into a full theory. False light, they argue, should be understood as the tort that addresses "[g]iving publicity to what are purported to be private facts about the plaintiff, where doing so would be highly offensive if such statements were true."[59] The wrong consists in creating widespread false beliefs about the plaintiff's private life — beliefs that, if true, would constitute the kind of exposure the public disclosure tort protects against. The paradigmatic modern example is a deepfake sex video: the video is not a record of anything that actually happened, but it creates exactly the kind of unwanted public perception of one's intimate life that a genuine sex video would create.[60]

The framework gets several things right. First, it explains why false light belongs in the privacy family rather than the defamation family. (Though, as I will argue, false light also protects a distinct non-privacy interest, lying outside both the privacy family and the defamation family.) The wrong is not that the defendant made the plaintiff look bad — in many false light cases, the plaintiff looks fine — but that the defendant seized control over the public's perception of the plaintiff's private life. Second, it explains the

[57] Nimmer, *supra* note 9, at 963.

[58] One might object that fabricated disclosures are, in principle, corrigible in a way true disclosures are not: the victim can deny the charge and hope to restore secrecy, whereas a true exposure, once made, cannot be undone without lying. That difference matters. But it does not undermine Nimmer's point. In practice, corrections are noisy, partial, and often futile, and the victim is still forced into a double bind: accept the fabricated narrative, or contest it at the cost of further circulation. The core wrong in both cases is the loss of control over what others take to be her intimate life, not the ease with which the record can be set straight.

[59] Goldberg & Zipursky, *supra* note 8, at 462.

[60] *See id.* at 462 (noting that the deepfake era makes false light's availability especially important); *see also* Danielle Keats Citron, *Sexual Privacy*, 128 YALE L.J. 1870, 1934–35 (2019); Matthew B. Kugler & Carly Pace, *Deepfake Privacy: Attitudes and Regulation*, 116 NW. U. L. REV. 611, 629 (2021).

parallel between § 652D and § 652E of the Restatement: both torts protect the same interest (control over what the public knows about one's private affairs), but one addresses true disclosures and the other addresses false ones. Third, it accounts for the puzzling omission, noted by Goldberg and Zipursky, of § 652D's "not of legitimate concern to the public" limitation from § 652E — an omission they attribute to the Restatement drafters' confusion about whether false light was a privacy tort or something else.[61] If false light is a genuine privacy tort, it should include that limitation. Its absence is a drafting error, not a feature.

Fourth — and this matters for the deepfake era — the framework provides a principled basis for tort liability in cases involving synthetic media depicting private conduct. As Goldberg and Zipursky observe, "[w]hether or not it causes reputational harm, being falsely presented to the world in a fake sex video is to be associated with something with which it is highly offensive to be associated."[62] The pseudo-disclosure framework explains why: the wrong is the same unauthorized control over the public's picture of the plaintiff's private life, regardless of whether the underlying material is real or fabricated.

This Article's argument accepts all of this. What it does not accept is that the pseudo-disclosure framework exhausts the field — that every case false light has historically covered is either a pseudo-disclosure case or a mistake. The next Part identifies the cases the framework leaves behind.

2. The "If True" Test.

Goldberg and Zipursky's analysis of false light implies a filter — one they acknowledge but do not name. If false light is a pseudo-disclosure tort, then its domain should be limited to cases where the false statement, if true, would constitute actionable public disclosure. This Article calls that filter the "if true" test.[63]

The logic is straightforward. Public disclosure of private fact, § 652D, protects against the widespread dissemination of true private information that a reasonable person would find highly offensive. Goldberg and Zipursky's claim is that false light, § 652E, protects against the same wrong with fabricated information substituted for true information. But this structural parallel generates a constraint: a case falls within false light's domain only if the fabricated "information," were it true, would fall within public disclosure's domain. A deepfake sex video passes the test — if the video were real, publishing it would be a paradigmatic public disclosure case.

---

[61] Goldberg & Zipursky, *supra* note 8, at 472–74.

[62] *Id.* at 476.

[63] Goldberg and Zipursky do not use this label. But the test follows from their argument that false light should protect against publicity given to matters that are "genuinely private, offensive when publicly disseminated, and not newsworthy." Goldberg & Zipursky, *supra* note 8, at 481. If the matter would not be private even if true, then by hypothesis there is no privacy interest at stake — and the pseudo-disclosure framework has nothing to say about it.

A fabricated account of someone's private medical condition passes the test — if the condition were real, disclosing it would invade privacy. But a false claim that a poet wrote a terrible poem does not pass the test. If the poet really had written it, publishing that fact would disclose nothing about the poet's private life. The "if true" filter excludes it.

The test has antecedents predating Goldberg and Zipursky. In 1968, Nimmer himself drew precisely this line. Having argued that false light cases involving putatively private facts should be treated as conceptually indistinguishable from public disclosure cases, Nimmer added a qualification: "If the untrue statements in a false light case are not as to matters which if true would be private, then the interest in privacy is by hypothesis nonexistent and therefore cannot counterbalance any opposing interest in free speech."[64] The gap this Article identifies was visible to Nimmer nearly sixty years ago. He saw that some false light cases — those involving matters that would not be private even if true — lacked a privacy interest. He listed *Spahn* and *Goldberg v. Ideal Publishing Corp.* (in which views on sexual freedom were falsely ascribed to a rabbi) as examples.[65] But Nimmer did not ask what interest, if not privacy, those cases *were* protecting. His concern was the First Amendment calculus, not the underlying tort theory. He noted that such publications "may nevertheless be offensive, and tortious under the law of privacy," and moved on.[66]

Goldberg and Zipursky arrive at the same boundary from the opposite direction. Where Nimmer worked forward from First Amendment theory, Goldberg and Zipursky work backward from the structure of the privacy torts. But the conclusion is the same: cases that fail the "if true" test are not privacy cases. Goldberg and Zipursky acknowledge this directly. Had the Restatement drafters been more rigorous about treating false light as a genuine privacy tort, they write, those drafters "probably would have omitted some of its illustrations, such as the example based on Lord Byron's case. . . . It may well be an injurious wrong falsely to attribute a terrible poem to a renowned poet. Less clear is that this wrong consists of interfering with the poet's interest in not having members of the public form beliefs about certain sensitive matters pertaining to the poet's private life."[67]

The concession is precise and, for the purposes of this Article, foundational. Goldberg and Zipursky identify a class of cases — false attribution of characteristics that are not private — and acknowledge that these cases involve a real wrong ("an injurious wrong") while simultaneously conceding that the wrong is not a privacy wrong as their framework defines it. They do not theorize the wrong. They do not name the interest it invades. They leave it, as Nimmer left it, as an acknowledged but unaccounted-for residuum.

---

[64] Nimmer, *supra* note 9, at 964.

[65] *Id.* at 964 n.96 (citing *Goldberg v. Ideal Pub. Corp.*, 210 N.Y.S.2d 928 (Sup. Ct. 1960)).

[66] *Id.* at 964.

[67] Goldberg & Zipursky, *supra* note 8, at 474.

The question this Article takes up is the one that both Nimmer and Goldberg and Zipursky left open: what *is* the interest? The next Part examines the cases that fall through the "if true" filter and shows that they share a common structure — one that is neither privacy nor defamation, but something distinct.

C. What the "If True" Test Eliminates

1. The Eliminated Cases.

The "if true" test is clarifying precisely because it sorts cases into two groups: those that are privacy-like (the pseudo-disclosure cases) and those that are not. This Part walks through the cases in the second group — the ones the test eliminates — and shows that they involve recognized injuries that neither defamation, intentional infliction of emotional distress, nor appropriation can absorb. I begin with the cleanest example and proceed toward the harder ones.

Spahn. Begin with the case with which this Article opened. If Spahn really had earned a Bronze Star, really had led repairs at Remagen under fire, publication of those facts would have been unobjectionable news about a public figure. The harm was not reputational — the book made Spahn look *better*, not worse. The harm was not a privacy invasion — nothing private was disclosed. The harm was that a public identity was fabricated and hung on Spahn without his consent.[68]

Jews for Jesus, Inc. v. Rapp. Edith Rapp, a Jewish woman, was falsely depicted in a Jews for Jesus newsletter, posted on the organization's website, as having embraced the group's teachings.[69] If she really had converted, that fact would not be the kind of information that public-disclosure doctrine protects; religious affiliation, once professed, is typically public.[70] The Fourth District affirmed dismissal of the defamation claim on the ground that the "'common mind' reading the newsletter would not have found Edith to be an object of 'hatred, distrust, ridicule, contempt or disgrace.'"[71] The Florida Supreme Court declined to recognize false light and, on the defamation claim, adopted the "substantial and respectable minority" standard of Restatement § 559 cmt. e — a move that, as discussed in Part III.B, distorts defamation's core.[72]

The Republican illustration. Illustration 4 in § 652E of the Restatement (Second) of Torts describes a plaintiff whose name continues to appear on a widely circulated petition supporting a political candidate after he has

---

[68] *See supra* Part I.

[69] *Rapp*, 997 So. 2d at 1100–01.

[70] *See* RESTATEMENT (SECOND) OF TORTS § 652D cmt. b (Am. L. Inst. 1977) ("[T]here is no liability for giving further publicity to what the plaintiff himself leaves open to the public eye."). *Cf. Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040, 1047–50 (1984).

[71] *Rapp v. Jews for Jesus, Inc.*, 944 So. 2d 460, 464 (Fla. 4th DCA 2006).

[72] *Rapp*, 997 So. 2d at 1114–15.

demanded its removal.[73] Apply the "if true" test: if the plaintiff really were a supporter of that candidate, publishing that fact would disclose nothing private — political affiliation is public. The test eliminates the case. Now check the neighboring torts. The statement is not defamatory: being associated with a political party does not, by any standard measure, lower one's reputation.[74] It is not extreme and outrageous conduct, so intentional infliction of emotional distress is unavailable. No commercial exploitation has occurred, so appropriation does not apply. Yet the Restatement treats the case as actionable. Something is being protected, but what?

The illustration is not purely hypothetical. In *Hinish v. Meier & Frank Co.*, the optical department of a Portland department store forged the plaintiff's name on a telegram to the Governor of Oregon urging him to veto a pending optician-licensing bill.[75] The plaintiff, George Hinish, was a classified federal civil service employee and was accordingly prohibited from engaging in political activity.[76] The Oregon Supreme Court reversed the demurrer dismissal and recognized an actionable invasion of privacy — a ruling Prosser would later classify as a canonical false light case.[77]

Hinish presents Illustration 4 in its decided form: the telegram was not defamatory — urging a veto is a legitimate political act that does not lower anyone's reputation; no private fact was disclosed — Hinish had no actual view on the bill, the political position was fabricated wholesale; yet the wrong was real and actionable. The concrete injury — exposure to civil service discipline for political activity he never undertook — underscores the point: the harm of misattribution is not reducible to reputational injury.

The pattern recurs. Courts recognized analogous wrongs as early as 1913, when the Louisiana Supreme Court in *Schwartz v. Edrington* upheld an injunction against the continued publication of repudiated signatures on a petition to incorporate a village.[78] A decade later, in *State ex rel. La Follette v. Hinkle*, the Washington Supreme Court ordered 'La Follette' stricken from the ballot designation of a state political party that had used the presidential candidate's name without his consent, observing that "[n]othing so

---

73 RESTATEMENT (SECOND) OF TORTS § 652E illus. 4 (1977).

74 *See* Robert C. Post, *The Social Foundations of Defamation Law: Reputation and the Constitution*, 74 CAL. L. REV. 691, 693–710 (1986) (sketching three concepts of reputation). Whichever of Post's three concepts of reputation one applies — property, honor, or dignity — the petition-signer's grievance fits. The fit is tightest with honor: the wrong is the public ascription of a political identity the plaintiff rejects, not damage to any property-like interest in goodwill.

75 *Hinish v. Meier & Frank Co.*, 113 P.2d 438, 439–40 (Or. 1941).

76 *Id.* at 440 (noting Hinish's allegation that he was "prohibited by statute and the rules duly promulgated by the United States Civil Service Commission from engaging in political activities").

77 Prosser, *supra* note 15, at 398 (classifying *Hinish* as an illustration of "false light in the public eye" alongside *Lord Byron v. Johnston*).

78 *Schwartz v. Edrington*, 62 So. 660 (La. 1913). The court held that continued publication of a signed petition, after the signers have withdrawn consent and disowned it as having been signed under a misapprehension, may be enjoined. *Id.* at 663.

exclusively belongs to a man or is so personal and valuable to him as his name."[79] And as recently as 1984, the Connecticut Appellate Court in *Jonap v. Silver* affirmed a jury verdict for false light where an employer caused a letter criticizing FDA policies to be published under the plaintiff's name without his consent.[80] Four decided cases from four jurisdictions, spanning more than seventy years, all recognize the same kind of wrong that Illustration 4 describes.

Arrington v. New York Times. Clarence Arrington, a young Black financial analyst, was photographed while walking down a public street. His photograph was used, without his knowledge or consent, as the cover image for a *New York Times Magazine* article titled "The Black Middle Class: Making It."[81] The article argued that the expanding Black professional class was growing detached from "its less fortunate brethren."[82] Arrington strongly disagreed with this thesis. Arrington and readers who knew him experienced the article as holding him out as an "exemplar" of views he rejected.[83] Apply the "if true" test: even if Arrington *had* held those views, expressing them would not have disclosed anything private — political and social opinions are public matters. Not defamatory — nothing reputation-lowering about being identified as middle-class. The court held that, even assuming false light were cognizable in New York, the article did not meet the "highly offensive to a reasonable person" standard, and rejected his statutory appropriation claim on newsworthiness grounds.[84] Arrington was left without a remedy.

This outcome does not show that the wrong is unrecognized in American law; *Hinish*, *Schwartz*, *Hinkle*, and *Jonap* each vindicate it. It shows, rather, that the gap in New York is a jurisdictional artifact of the state's refusal to recognize false light — a refusal whose cost is made concrete by Arrington's loss. One leading casebook puts the question directly: "Should a person have legal recourse from having her image associated, without her consent, with views that she disagrees with?"[85]

Lord Byron v. Johnston. The case that gives false light its origin story — and that Goldberg and Zipursky would eliminate — involved the circulation of "a spurious and inferior poem attributed to [Byron's] pen."[86] The case admits of a distinction the parties to it did not need to draw. A poem may be un-

---

[79] *State ex rel. La Follette v. Hinkle*, 229 P. 317, 319 (Wash. 1924).

[80] *Jonap v. Silver*, 1 Conn. App. 550, 558–59 (1984). Anchoring its analysis in RESTATEMENT (SECOND) OF TORTS § 652E cmt. a — which requires that "the matter published concerning the plaintiff is not true" — the court refined the falsity inquiry for the misattribution context: "[I]t is not whether or not the assertions made are true, but whether the assertions or beliefs are in truth those of the plaintiff." *Id.* at 559.

[81] *Arrington v. New York Times Co.*, 55 N.Y.2d 433, 437 (N.Y. 1982).

[82] *Id.*

[83] *See id.*

[84] *Id.* at 440–42.

[85] DANIEL J. SOLOVE & PAUL M. SCHWARTZ, INFORMATION PRIVACY LAW 243 (7th ed. 2020).

[86] Prosser, *supra* note 15, at 398 (citing *Lord Byron v. Johnston*, 2 Mer. 29, 35 Eng. Rep. 851 (1816)).

Byronic in two ways: it may be terrible (in which case the wrong also sounds in defamation), or it may be technically competent but not Byron's — Miltonic where Byron is satirical, formal where he is unbuttoned.[87] The first species of un-Byronic verse blurs into defamation; the second does not. The misattribution interest reaches both. The original *Byron* injunction would have reached both as well, since the Lord Chancellor required no showing of quality before enjoining publication.[88]

I include *Byron* here not as a clean illustration of the misattribution category but as evidence that the category exists: Goldberg and Zipursky themselves concede that Byron suffered "an injurious wrong" while denying it is a privacy wrong.[89] The *Byron* problem is a doctrinal loose end that the misattribution interest, properly conceived, can tie up.

The war-hero romance. A brief note on Restatement Illustration 5, which describes a film about the plaintiff's life that includes a fabricated "non-existent romance."[90] One might read Illustration 5 as a pseudo-disclosure case on the theory that a real romance would have been private. But the Restatement itself frames the illustration as a misattribution case: the harm is the attribution of a romantic life the plaintiff did not lead, not the exposure of any private fact.[91] The framework's treatment of Illustration 5 is not an

---

[87] I thank Samuel Bray for pressing the distinction between a poem that is un-Byronic *because* it is bad and a poem that is un-Byronic despite being technically competent. *Byron v. Johnston* itself, as a procedural matter, does not appear to have required any showing of quality — the injunction issued on the strength of the authorship dispute alone. The Restatement's later gloss ("spurious and inferior poem") imported a quality dimension that the original equitable action did not need. The misattribution interest, properly conceived, reaches both species of un-Byronic verse: the terrible (which also sounds in defamation) and the competent-but-not-Byron's (which sounds only in misattribution, and which the original *Byron* injunction would have reached).

[88] As noted, *Byron* is an imperfect specimen for present purposes — attributing bad verse to a poet plausibly sounds in defamation — but the very fact that common-law courts have strained defamation doctrine to reach authorship misattribution is itself evidence that the misattribution interest sits uneasily within the reputation tort. *See Ben-Oliel v. Press Pub. Co.*, 167 N.E. 432, 433–34 (N.Y. 1929) (sustaining libel claim where newspaper published article on Palestinian customs under plaintiff-scholar's name; libel theory required treating the misattributed article as an implied statement that plaintiff endorsed its "grossly false" contents); *Clevenger v. Baker Voorhis & Co.*, 168 N.E.2d 643, 645–46 (N.Y. 1960) (same theory for misattributed revision of legal treatise; cause of action depended on the 1959 edition containing "many inaccuracies"). Both decisions locate the wrong in reputational harm flowing from the quality of the misattributed work, reaching the misattribution interest only in the subset of cases where the attributed content is itself discrediting. *Clevenger*, in particular, had to reach back to an 1832 English case, *Archbold v. Sweet*, 5 Car. & P. 219, 172 Eng. Rep. 947, to justify treating the title-page misattribution as libel.

[89] Goldberg & Zipursky, *supra* note 8, at 474.

[90] RESTATEMENT (SECOND) OF TORTS § 652E illus. 5.

[91] Comment b to § 652E describes the protected interest as one against publicity that "attributes to [the plaintiff] characteristics, conduct or beliefs that are false, and

argument that every fictionalized film of a living person is actionable; clearly-labeled biopics, historical fiction, and works whose fictional character is evident to the reasonable audience fall outside the tort's "presented as fact" requirement.[92] For now, I set this illustration aside and rely on the more straightforward examples above.

2. The Gap.

These cases share a structure. In each, someone is publicly associated with characteristics, views, works, or affiliations that are not theirs. In none is the association reputation-lowering in the defamatory sense. In none would the attributed characteristic, if true, disclose anything private. In none is the defendant's conduct extreme and outrageous enough for intentional infliction of emotional distress. In none has the defendant commercially exploited the plaintiff's name or likeness.[93]

Considered together, these cases reveal a structural gap: a class of injurious wrongs that our existing tort categories have repeatedly struggled to capture. Defamation protects reputation. Public disclosure protects informational privacy. Intentional infliction of emotional distress addresses extreme conduct. Appropriation protects the commercial value of identity. Since at least Prosser's day, however, courts have also been reaching for a different kind of wrong: the imposition of a false public identity on someone who did not choose it.

Goldberg and Zipursky's treatment of false light reveals this gap by drawing a sharp line around the privacy function. In doing so, it makes visible what was previously obscured: that false light doctrine, as historically practiced, was doing two jobs. The first — protecting against pseudo-disclosures of private facts — is the job Goldberg and Zipursky identify and defend. The second — protecting against the public misattribution of characteristics the plaintiff does not possess — is the job their framework leaves unaccounted for. The remainder of this Article explores the second.

---

so … place[s] [him] before the public in a false position." RESTATEMENT (SECOND) OF TORTS § 652E cmt. b (1977). Illustration 5 itself juxtaposes the non-defamatory character of the film with the imposition of privacy liability: "Although A is not defamed by the motion picture, B is subject to liability to him for invasion of privacy." *Id.* illus. 5. The pseudo-disclosure reading would require treating any fabricated intimate fact as a privacy violation merely because the genuine version would have been private, collapsing the distinction between Prosser's second and fourth branches.

[92] *See infra* Part III.A.3 & note 150 (treating the fiction/non-fiction line).

[93] *Cf.* Ryan Calo, *The Boundaries of Privacy Harm*, 86 IND. L.J. 1131, 1133–35 (2011) (distinguishing "subjective" privacy harms (perception of unwanted observation) from "objective" privacy harms (unanticipated use of information against a person) — a taxonomy in which misattribution fits neither category comfortably).

3. The Disease, Victimization, and Sexual Orientation Cases.

One further set of cases warrants attention before leaving Part I, because Goldberg and Zipursky themselves return to it and propose that their framework absorbs it. False attributions of disease (HIV, terminal cancer, autism), of sexual victimization, and of sexual orientation are cases defamation law has handled badly. To treat the attribution as defamatory is to credit the premise that having such a disease, or such a history, or such an orientation, makes a person less worthy of respect. Goldberg and Zipursky propose to relocate these cases within their pseudo-disclosure framework: disease, sexual history, and sexual orientation, they argue, are plausibly private facts, and the wrong consists not in the negative appraisal but in the imposition of an unwanted public picture of the plaintiff's private life. They accept, in service of this proposal, a qualification of their broader claim that false light should not be deemed a supplement to defamation.[94]

The proposal works where it works. Its reach, however, is jurisdictionally contingent on the formal recognition of disease, sexual history, and sexual orientation as private facts within a given jurisdiction's privacy law. Where that recognition is absent, the "if true" test eliminates the very cases Goldberg and Zipursky propose to capture. Those cases then revert to the structure of *Spahn* and *Hinish*: the wrong is not the apparent (though non-veridical) revelation of a private fact but the false attribution of a characteristic the plaintiff has not embraced. The wrong the courts in these cases have been responding to, whatever doctrinal label they have reached for, is misattribution.[95]

---

[94] Goldberg & Zipursky, *supra* note 8, at 484–85 ("If the cost of our advocating this solution is to qualify our assertion that false light should not be deemed a supplement to defamation, we are happy to accept that cost.").

[95] The contrast between pseudo-disclosure and misattribution can be sharpened along three axes, set out here so that the body argument lands without further interruption. First, the wrong differs in structure. Pseudo-disclosure addresses a wrong of exposure: the audience believes it has learned something private about the plaintiff. Misattribution addresses a wrong of imposition: the audience believes the plaintiff has the attribute, whether or not the attribute is private. Second, the remedy follows the wrong. Pseudo-disclosure vindicates informational sovereignty over what the public takes itself to know about the plaintiff's private life. Misattribution vindicates the dignitary interest against being forced to wear a false public identity. Third, the triggering conditions differ. Pseudo-disclosure requires the fact attributed be one the plaintiff would have had standing to control as private had it been true; misattribution requires falsity, offensiveness, publicity, and the constitutionally required showing of fault — actual malice where *Time, Inc. v. Hill* governs, and at minimum the fault floor established in *Gertz v. Robert Welch, Inc.* for private-figure defamation plaintiffs (a floor whose applicability to private-figure false light claims the Supreme Court has not resolved) — and reaches fabricated political affiliations, fabricated public conduct, fabricated authorship, and other attributes that are not private facts at all. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974) (holding that "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual"); *Cantrell v. Forest City Publ'g*

II. The Misattribution Interest

A. Privacy, Self-Presentation, and Misattribution

1. Goldberg and Zipursky's Own Formulation — and Its Tension.

The cases eliminated by the "if true" test are not privacy cases on Goldberg and Zipursky's account. But Goldberg and Zipursky's own language suggests a broader conception of the interest at stake than their framework ultimately delivers. In characterizing false light's core, they write that it protects "persons' interest in how the public perceives and feels about them, and their control over such public perceptions."[96] They describe "an entitlement to control how one presents oneself to others" as being "in the same ballpark as defamation law's notion of an entitlement not to have one's name besmirched." [97] And they invoke Edward Bloustein's broader framework, noting his claim that the privacy torts are united by their concern with the "interest in preserving human dignity and individuality."[98]

This language is broader than the pseudo-disclosure theory requires. "Control over such public perceptions" and "an entitlement to control how one presents oneself to others" naturally extend beyond privacy into cases where the public perceives the plaintiff through the lens of *public* characteristics falsely attributed to them. Being falsely identified as a Republican interferes with how the public perceives you and with your control over your self-presentation — but it discloses nothing private. The self-presentation language covers the eliminated cases; the pseudo-disclosure theory does not. Goldberg and Zipursky want the narrower reading, confining false light to cases involving putatively private facts. Their own words pull toward the broader one.

This tension is not a flaw in Goldberg and Zipursky's argument; it is a sign that the interest they are describing has two dimensions that their framework collapses into one. One dimension is genuinely about privacy — control over what the public knows about one's private life. The other is about something else — control over the public identity that is attributed to you, regardless of whether that identity involves private matters. To see why these are distinct, it helps to turn to the philosophical literature on self-presentation, where the relationship between privacy and self-presentation control has been debated at great length.

Co., 419 U.S. 245, 250–51 (1974) (declining to decide whether *Hill*'s actual malice standard or *Gertz*'s fault standard governs private-figure false light claims). The two accounts are not competing reconstructions of a single wrong but distinct wrongs that may overlap in particular cases — an overlap that the capstone objection in Part III.D takes up directly.

[96] Goldberg & Zipursky, *supra* note 8, at 476.

[97] *Id.*

[98] *Id.* at 475 (citing Edward J. Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser*, 39 N.Y.U. L. REV. 962, 1005 (1964)).

2. The Self-Presentation Fork: Marmor vs. Véliz.

Andrei Marmor has argued, in a series of influential articles, that privacy just *is* reasonable control over self-presentation. The right to privacy, on Marmor's account, is "grounded in people's interest in having a reasonable measure of control over the ways in which they can present themselves (and what is theirs) to others."[99] Marmor cites Goffman's *The Presentation of Self in Everyday Life* as showing "an amazing repertoire of human behavior that is driven by our need to present ourselves to others in certain ways, almost as if we are all actors on a stage, putting on different performances for different audiences."[100] On this view, the interest at stake in all privacy cases is the interest in self-presentation control, and interferences with that control — including being falsely associated with views one does not hold — are privacy violations.

Marmor's account, if correct, would dissolve the problem this Article identifies. The eliminated cases would simply *be* privacy cases, because any interference with self-presentation is a privacy violation. The Republican illustration is a privacy case. *Arrington* is a privacy case. *Spahn* is a privacy case. No separate misattribution interest is needed.

The difficulty is that Marmor's account is too broad. If every interference with self-presentation is a privacy invasion, the concept of privacy loses its distinctive content. Being misquoted in a newspaper interferes with your self-presentation. Having your views mischaracterized in a political advertisement interferes with your self-presentation. Being falsely listed as an endorser of a product interferes with your self-presentation. These are wrongs — but are they *privacy* wrongs? The intuition that they are not is widely shared, and it is not easily dismissed as confusion.[101]

Carissa Véliz has pressed this objection directly. In a 2022 article responding to accounts like Marmor's, Véliz argues that privacy and self-presentation are "tightly connected" but "not one and the same thing."[102] Her argument proceeds by showing that each is neither necessary nor sufficient for the other. Privacy is not necessary for control over self-

---

[99] Andrei Marmor, *What Is the Right to Privacy?*, 43 PHIL. & PUB. AFF. 3, 4 (2015). *See also* Andrei Marmor, *Privacy in Social Media*, in THE OXFORD HANDBOOK OF DIGITAL ETHICS 575, 576 (Carissa Véliz ed., 2021) ("[T]he main interest protected by the right to privacy is our interest in having a reasonable measure of control over ways we present aspects of ourselves to different others.").

[100] Marmor, *What Is the Right to Privacy?* at 7 n.8. In Goffman's later work — specifically ERVING GOFFMAN, FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE (1974) — he cautions against taking the dramaturgical metaphor too literally, opening the book with "All the world is not a stage."

[101] *See* Maria P. Angel & Ryan Calo, *Distinguishing Privacy Law: A Critique of Privacy as Social Taxonomy*, 124 COLUM. L. REV. 507, 509–10 (2024) (arguing that privacy scholarship's expansion to encompass all information-based harms has obscured rather than illuminated the concept's core).

[102] Carissa Véliz, *Self-Presentation and Privacy Online*, 9 J. PRACTICAL ETHICS, no. 2, 2022, at 30.

presentation: a person may have no privacy with respect to a spouse who has seen them at their worst, yet still retain the ability to perform different social roles in different contexts.[103] Control over self-presentation is not necessary for privacy: a person forced to dress in a certain way for work loses self-presentation control without any loss of privacy.[104] Privacy is not sufficient for control over self-presentation: one may have complete privacy yet fail to self-present effectively because of anxiety, exhaustion, or incompetence.[105] And control over self-presentation is not sufficient for privacy: voluntarily disclosing intimate matters to a friend involves losing privacy while retaining full control over one's self-presentation.[106]

The upshot is that privacy and self-presentation control come apart in both directions. Some privacy invasions do not involve self-presentation (covert surveillance of a person who never learns of it). Some self-presentation interferences do not involve privacy (being falsely identified as a Republican in a widely circulated petition). Véliz's argument supports a conclusion that matters for this Article: *the eliminated cases — the ones that fail the "if true" test — are not privacy cases, even on the most expansive plausible account of what privacy protects*. If self-presentation control and privacy are distinct, then interfering with someone's public identity by falsely attributing characteristics to them is a self-presentation wrong, not a privacy wrong. It protects a genuinely different interest.

This conclusion finds further support in what might be called the knowledge account of privacy. On this view, privacy protects how we are *known* — and knowledge is factive.[107] Only true things can be known. A privacy invasion makes someone *know* something about your private life that they were not entitled to know. But being falsely called a Republican does not make anyone *know* anything about your private life; it gives them a *false belief* about your public identity. This falls outside privacy's scope — not because the harm is trivial, but because the mechanism is different. Privacy is about unauthorized access to truth. Misattribution is about the unauthorized imposition of falsehood.[108]

---

[103] *Id.* at 33.

[104] *Id.* at 35.

[105] *Id.*

[106] *Id.*

[107] *See* ALVIN I. GOLDMAN, KNOWLEDGE IN A SOCIAL WORLD 3–5 (1999) (developing an account of knowledge as a social achievement that depends on the truth of the proposition known). The factivity of knowledge — the principle that one can know only what is true — is a near-universal commitment in epistemology. *See also* Jeffery L. Johnson, *Privacy and the Judgment of Others*, 23 J. VALUE INQUIRY 157, 159–60 (1989) (arguing that privacy concerns are fundamentally about the judgments others form on the basis of information about us).

[108] *Cf.* NEIL RICHARDS, WHY PRIVACY MATTERS 3–4 (2022) (arguing that privacy is fundamentally about power and the rules governing information flows, rather than about concealment alone). Richards's account, like Véliz's, treats privacy as conceptually distinct from the broader category of interests in controlling one's public identity.

Goldberg and Zipursky do not cite Marmor or Véliz; their self-presentation language is their own.[109] But the fork in the philosophical literature maps directly onto the tension in their formulation. If Marmor is right that privacy *is* self-presentation control, then the eliminated cases are privacy cases and Goldberg and Zipursky's framework is too narrow. If Véliz is right that the two are distinct, then the eliminated cases fall outside privacy and the framework is correct to exclude them — but something else must account for the injury they involve. This Article sides with Véliz. The eliminated cases are not privacy cases. They are misattribution cases. And the interest they protect deserves its own name.

3. The Misattribution Interest Defined.

What false light protects, then, is neither the secrecy of a private fact nor the accuracy of a reputational judgment. It is the plaintiff's position as the author of her own public identity — her entitlement to be the one whose actual statements, conduct, affiliations, beliefs, works, and characteristics constitute the version of her that circulates in the social world. The misattribution interest is the interest in not having that authorial position usurped by a defendant who fabricates the material from which a public version of the plaintiff is then constructed and disseminated.

The misattribution interest is distinct from each of its neighbors. It is not the reputational interest protected by defamation, because the misattributed characteristic need not be reputation-lowering. Being publicly listed as a satisfied user of a copy machine one has actually rejected, being depicted in a flattering war-hero romance one did not live, being credited with a recipe one did not write — none of these lower others' estimation of the plaintiff's moral or professional qualities, yet courts have long treated them as cognizable wrongs.[110] It is not the privacy interest protected by public disclosure or by Goldberg and Zipursky's reconceptualized false light, because the misattributed characteristic need not be private. As the previous Part argued, falsely calling someone a Republican does not disclose anything about their private life; it imposes a false characterization of their public identity.[111] It is not the emotional tranquility interest protected by intentional infliction of emotional distress, because the wrong does not require extreme and outrageous conduct — ordinary journalistic error, political mischaracterization, or unauthorized biographical embellishment can

[109] Goldberg & Zipursky, *supra* note 8, at 475–76.

[110] *Fairfield v. American Photocopy Equip. Co.*, 138 Cal. App. 2d 82, 86 (Dist. Ct. App. 1955) (lawyer listed in advertisement as a satisfied user of a copy machine he had actually returned as unsatisfactory; court held that the plaintiff could maintain an action for invasion of privacy, observing that the "injury is mental and subjective"). *See also* Wade, *supra* note 43, at 1097 (treating *Fairfield* as a paradigm case of the privacy/reputation distinction).

[111] *See supra* Part II.A.2.

suffice.[112] And it is not the commercial identity interest protected by appropriation or the right of publicity, because no commercial exploitation of the plaintiff's name or likeness is required.[113]

A misattribution of this kind injures the plaintiff even when nothing reputationally adverse is said about her, and even when she herself is not deceived about who she is. What the defendant has done is to substitute the defendant's authorship for the plaintiff's over the public version of the plaintiff. The plaintiff is then left to live inside a public identity she did not write — addressed, perceived, and acted toward through a version of herself that someone else composed.

This interest is not entirely new to the law. It is latent in the Restatement illustrations that survive the "if true" test's elimination — illustrations the drafters included because they recognized a genuine wrong, even though they could not clearly articulate the interest at stake. It is latent in Nimmer's concession that non-private false light cases "may nevertheless be offensive, and tortious."[114] It is latent in Goldberg and Zipursky's acknowledgment of an "injurious wrong" that their framework cannot reach.[115] What has been missing is a theoretical account of *why* it is a wrong — an account that identifies the kind of harm misattribution inflicts and explains why it matters. The next Part provides that account.

B. Grounding the Interest: Authorial Control over Public Identity

The previous Part identified the misattribution interest, distinguished it from its neighbors, and gestured at the positive account this Part now provides. What the false light tortfeasor wrongs is the plaintiff's interest in *authorial control over her own public identity*: in being the one whose actual statements, conduct, affiliations, beliefs, works, and characteristics constitute the public version of who she is. The wrong of misattribution is the forcible imposition of an authored-by-someone-else public identity. That imposition is the harm whether the imposed identity is flattering or damaging, accurate-adjacent or wildly inapt, believed by the plaintiff or known by her to be false.

One might worry that this framing presupposes more than it should. Suppose *A* is privately an *X*, allows the world to believe she is a *Y*, and would prefer the world to believe she is a *Z*. *A* magazine then falsely describes her as a *W*. If the misattribution interest protects something like the *integrity* of the plaintiff's existing public self, *A*'s claim looks unstable: the

112 *See* RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965) (requiring conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency").

113 *Cf.* MATTHEW B. KUGLER, PRIVACY LAW: CASES AND MATERIALS 107 (2d ed. 2025) (describing the right of publicity as grounded in economic exploitation or "a right of self-definition" that "prohibits unauthorized uses of an individual's identity that might interfere with the meaning and values the public associates with that person"). The misattribution interest covers the identity dimension without requiring commercial exploitation.

114 Nimmer, *supra* note 9, at 964.

115 Goldberg & Zipursky, *supra* note 8, at 474.

public self the law is asked to protect is itself a construction *A* maintains without disclosing the underlying truth. The authorial-control framing dissolves the worry. The frame does not require the plaintiff's current public self to be accurate, or even to be her preferred presentation; it requires only that the source material from which any public self of hers is built — her actual statements, conduct, affiliations, and the rest — be genuinely hers. The interest is in being the author of whichever public identity one presents, true or curated, candid or self-protective, settled or in flux. The defendant's wrong is to usurp that authorial position, not to rupture some correspondence between public self and private fact. *A* retains her claim against the magazine because the magazine has done to her exactly what the doctrine forbids: it has authored, and disseminated, a version of *A* that *A* did not write.[116]

The wrong, framed this way, has a recognizable structure. The defendant uses the plaintiff's name, face, or public presence as the point of attachment, and constructs around it a public identity — affiliations, beliefs, conduct, biography — that the plaintiff did not author and cannot easily disown.[117] Warren Spahn's name was used to attach a fabricated war record. Clarence Arrington's photograph was used to attach a social thesis he rejected. Edith Rapp's name was used to attach a religious conversion she had not undergone. In each case, the plaintiff was conscripted into a performance that was not theirs. The performance circulates, and others encounter the plaintiff through it. The plaintiff is then left to live inside a public identity that has been written for her — and, having been written and disseminated by someone else, is no longer fully hers to revise.

Two features of the wrong are worth noting because they explain features of the doctrinal cases that pseudo-disclosure and defamation accounts struggle to accommodate.

---

[116] An earlier formulation of this argument located the interest in the "integrity of the plaintiff's public self." That framing invited an objection: if the plaintiff's public self is itself a partial or curated construction — *A* privately an *X*, publicly believed a *Y*, wishing to be taken for a *Z* — then the law would be in the awkward position of protecting the integrity of a presentation that is not itself integral. The authorial-control framing dissolves the objection. What the law protects is not the correspondence between public self and private fact, but the plaintiff's position as the author of her own public presentation. The plaintiff retains her claim against a defendant who imposes a public identity she did not write, whether or not the public identity she had been writing for herself was candid, curated, or in flux. I am grateful to Samuel Bray for pressing this point.

[117] The image of the body as the point of attachment for a publicly constructed identity has a sociological pedigree. *See* ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 253 (1959) (describing how, in the collaborative construction of selfhood, the individual "and his body merely provide the peg on which something of collaborative manufacture will be hung for a time"). Goffman's broader vocabulary for the divergence between an imputed and an underlying social identity supplies a useful descriptive frame, though the legal interest defended here does not rest on it. *Cf.* ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 2 (1963).

The first feature is that the wrong is *valence-independent*. A laudatory fabrication is as much an unauthorized authorship as a damaging one. The Appellate Division in *Spahn* itself caught the point: "a laudatory treatment may make one appear more ridiculous than a factual one, at least to those who know enough of the truth."[118] The flattering-but-false biography of Spahn was not less an act of authorship-by-the-defendant for being flattering. Whether the imposed identity is rated by the audience as positive, negative, or neutral, the structural wrong — the defendant's having authored the plaintiff's public self — is the same.

Valence is independent of the wrong, but it is not the only axis along which misattributions vary, and the authorial-control frame suggests how the others should interact. Two further axes matter: magnitude, or how sharply the imposed identity departs from the plaintiff's actual one, and breadth of circulation, or how widely the imposed identity travels. Both bear on the § 652E offensiveness inquiry, and the frame predicts they trade off against one another rather than operate as independent thresholds.[119] A moderately inapt characterization broadcast widely displaces the plaintiff from authorial position more thoroughly than the same characterization confined to a small audience would; a grossly inapt characterization may displace her decisively even when its circulation is comparatively narrow. Whether the cases have worked this trade-off out explicitly is a separate question, since § 652E and its commentary leave the interaction underspecified, but the frame gives the right shape of answer to the recurring objection that any particular misattribution looks too small, in the abstract, to support liability.

The second is that the wrong is audience-facing. The plaintiffs in the leading cases were not deceived about themselves: Spahn knew he had no Bronze Star, Arrington knew he had not written the *Times Magazine* essay, Rapp knew she had not converted. They were not confused; they were, if anything, indignant. The wrong sat in their having to move through a social world whose picture of them had been reorganized around a fiction they did not write, knowing that the picture was false, knowing that others did not know this, and aware that ordinary interactions might now be filtered through the version of them that had been constructed for the audience rather than the version they had been constructing themselves.[120]

---

[118] *Spahn v. Julian Messner, Inc.*, 23 A.D.2d 216, 221 (1st Dep't 1965), *aff'd*, 18 N.Y.2d 324 (1966), *vacated and remanded*, 387 U.S. 239 (1967), *aff'd on remand*, 21 N.Y.2d 124 (1967).

[119] I have not found a clean minimal pair of cases that isolates magnitude against breadth, and § 652E doctrine treats "highly offensive" as a unitary judgment without disaggregating its components. The trade-off is offered here as a frame-generated prediction, not a doctrinal claim. Testing it would require a case-pair analysis I have not undertaken.

[120] The mechanism by which an imposed public identity is *felt* by the plaintiff — through her awareness that others now perceive her through it — has been described in the sociological literature as "reflected appraisal." *See* CHARLES HORTON COOLEY, HUMAN NATURE AND THE SOCIAL ORDER chs. V–VI (1902) (developing the related notion of the "looking-glass self"). Cooley's apparatus is congenial to the argument here but not load-bearing on it: the legal interest in

This audience-facing structure is what neither rival account accommodates. The emotional-distress reading inherited from *Time, Inc. v. Hill* models the wrong as the plaintiff's distress, and so cannot explain why indignant or merely irritated plaintiffs prevail. The defamation account models the wrong as the audience's lowered estimation of the plaintiff, and so cannot explain why plaintiffs in flattering-misattribution cases prevail. Misattribution captures both: the wrong is the audience's holding a false picture, irrespective of whether that picture lowers the plaintiff in their eyes and irrespective of how the plaintiff feels about it.

This is why misattribution does not collapse into intentional infliction of emotional distress, even though both torts can involve emotional injury. IIED is conduct-focused: it tracks the outrageousness of the defendant's behavior and the severity of the plaintiff's distress.[121] The misattribution interest is structure-focused: it tracks the alteration of the plaintiff's public identity. Misattribution can be violated by conduct that is not "outrageous" in the IIED sense — ordinary journalistic error, careless biographical embellishment, unauthorized political characterization — provided that the conduct authors and disseminates a public identity the plaintiff did not write. And it can be violated where the plaintiff's emotional response is muted, so long as her public self has been reshaped in the eyes of others. The torts intersect; they do not coincide. IIED measures a threshold of emotional injury. Misattribution measures a structural injury to authorial position.[122]

C. The Framework Applied

The authorial-control account resolves three puzzles that other accounts of false light leave open.

The Spahn puzzle: why laudatory falsehoods are harmful. Goldberg and Zipursky's pseudo-disclosure account cannot reach a flattering fabrication: if the false information would be positive even if true — a Bronze Star, a romantic reunion, a formative father-son bond — there is no disclosure of a "plausibly private" fact. Defamation cannot reach it either: the plaintiff's

---

authorial control over one's public identity stands without reference to the particular psychological mechanism by which its violation is experienced.

121 *See* RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (Am. L. Inst. 1965) (requiring conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency").

122 Edward Bloustein's influential argument that the privacy torts share a concern with "human dignity and individuality" reaches in the direction of the interest defended here, but at a level of generality that does not sort cases. *See* Edward J. Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser*, 39 N.Y.U. L. REV. 962, 1003 (1964). Goldberg and Zipursky invoke Bloustein approvingly while noting that his view "comes with a lot of moral and philosophical baggage." Goldberg & Zipursky, *supra* note 8, at 475. The authorial-control account stays closer to ground: it identifies a particular wrong-structure (the imposition of an authored-by-someone-else public identity) and sorts cases by reference to that structure, rather than by reference to a unitary dignity interest that explains all four privacy torts equally and thus distinguishes none of them.

reputation has been enhanced, not lowered. The authorial-control account explains the wrong directly. A Bronze Star you did not earn is an act of authorship-by-the-defendant in the same structural sense that a criminal accusation is: it places you, without your authorization, inside a public identity someone else has written for you. The valence is doctrinally irrelevant. What matters is that the plaintiff did not write it.

The Republican puzzle: why context-dependent harms are real harms. A common objection is that being falsely called a Republican is too trivial to support legal liability. Measured in the abstract, the objection has force. But false light has never measured offensiveness in the abstract. The Restatement's "highly offensive to a reasonable person" standard has always been understood as context-sensitive: serious offense is measured from the perspective of "a reasonable [person] in [the plaintiff's] position."[123] *Arrington* illustrates the point concretely. The harm to Arrington flowed from his position as a Black professional who rejected the article's thesis about the Black middle class; in a different community, the same association might not have been harmful.

The authorial-control framework accommodates this variability without strain: the public identity a plaintiff is constructing is always particular to the social world she inhabits, and the imposition of an alternative authorship is felt in relation to that world, not against a generic baseline. The point cuts in both directions. A flattering fabrication can be harmful, too, where the imposed identity is one the plaintiff has reason to disclaim within her own community — think of a religious figure falsely depicted accepting a prestigious secular award, or a public dissident falsely depicted endorsing the regime she opposes.

Why expanding defamation does not solve the problem. Defamation, on any standard account, protects reputation — the estimation in which others hold the plaintiff's moral or professional qualities.[124] The authorial-control account makes clear that misattribution protects something different. Defamation asks whether others think *less* of the plaintiff; misattribution asks whether others think the plaintiff is someone she is not. The two can come apart in both directions. Reputation can be damaged without authorial control being usurped (a damaging *true* disclosure may lower estimation without imposing an unauthorized public identity). And authorial control can be usurped without reputation being damaged (a laudatory fabrication imposes an unauthorized public identity without lowering anyone's estimation). Florida's

[123] RESTATEMENT (SECOND) OF TORTS § 652E cmt. c (Am. L. Inst. 1977) (offensiveness "measured from the perspective of a reasonable [person] in [the plaintiff's] position").

[124] *See* Robert C. Post, *The Social Foundations of Defamation Law: Reputation and the Constitution*, 74 CAL. L. REV. 691, 693–710 (1986) (identifying three concepts of reputation — property, honor, and dignity — all of which involve others' estimation of the plaintiff's qualities); Benjamin C. Zipursky, *Defamation, Presumed Damages, and Reputational Injury: A Legal and Philosophical Inquiry*, 4 J. FREE SPEECH L. 797, 806–14 (2024) (developing an "ideational theory" of reputation on which reputational injury consists in the diminution of third parties' ideas about the plaintiff, or, where there were no prior ideas, in the plaintiff coming to be the object of a negative set of such ideas).

expansion of defamation in *Rapp* — using the "respectable minority" test to absorb misattribution cases — forces a reputational frame onto an authorial-control harm. Part III.B develops the resulting distortions at length. The diagnostic point here is simpler: defamation and misattribution ask different questions, and answering one cannot substitute for answering the other.

III. Objections and Implications

A. The First Amendment Objection

1. The Objection Stated.

The strongest objection to recognizing the misattribution interest is constitutional. Attributing political views, religious beliefs, or organizational affiliations to people is, in many contexts, core political and social commentary. A tort that punishes such attributions — even false ones — threatens to chill speech about public matters. The First Amendment, on this view, requires tolerating some false speech in order to protect the "breathing space" that true speech needs to survive.[125]

Zimmerman pressed this objection directly. Her argument was that "at least where falsehoods do not damage reputation, a convincing reason for limiting their constitutional protection does not exist."[126] Even if some non-reputational falsehoods were in principle regulable, she argued, the false light tort would remain "unworkable" because defamation's constitutional privileges — designed for a different tort — are a poor fit, and the resulting regime chills accurate speech.[127]

Let's state the objection in its sharpest form. Consider the Republican illustration. If a person can sue over being falsely identified as a Republican in a petition, political discourse is chilled. Organizers of petitions must verify every name. Newspapers reporting on political affiliations face liability for ordinary errors. The line between false statement of fact and protected opinion blurs: is "she's basically a Republican" actionable, or just a characterization? The objection is that the misattribution interest, however real the underlying harm, is not worth the First Amendment cost.

This Article's answer is not that the cost is zero. It is that the cost has already been paid — and that the constitutional architecture already in place is sufficient to contain it.

2. The Constitutional Architecture Already in Place.

The misattribution interest does not require new doctrine. It provides a new justification for existing doctrine — specifically, for the constraints on § 652E that have already survived constitutional scrutiny. Five constraints are relevant. Four come directly from § 652E's text and comments and are

[125] *New York Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964).
[126] Zimmerman, *supra* note 30, at 370.
[127] *Id.*

addressed in this Part. A fifth — the fact/opinion line — comes from the First Amendment doctrine that § 652E expressly incorporates through comment d, and receives its own treatment in the next Part because it bears on a class of particularly hard cases.

The first constraint is *falsity*. § 652E imposes liability only where "the matter published… is not true."[128] A true attribution, however unwelcome, is not actionable as false light. The misattribution interest, by its very name, is engaged only when there is a false attribution to begin with. Truthful publicity that places the plaintiff before the public in an embarrassing light may sound in disclosure, but it is not within the scope of either the tort or the interest this Article defends.

The second constraint is *wide dissemination*. § 652E adopts by cross-reference the "publicity" requirement of § 652D, which the comments define as communication "to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge."[129] Casual remarks to a handful of acquaintances, private correspondence, and limited-audience communications fall outside the tort. The publicity requirement confines the misattribution interest to cases in which the plaintiff's public identity has actually been shaped by the false attribution.

The third constraint is the *"highly offensive" threshold*. § 652E imposes liability only where the false attribution "would be highly offensive to a reasonable person."[130] Comment c spells out what this threshold filters. "Most minor errors" — wrong addresses, mistaken career dates, "similar unimportant details" — do not suffice even when made deliberately, because they do not give "serious offense" to a reasonable person in the plaintiff's position. The tort reaches only attributions that produce "such a major misrepresentation of [the plaintiff's] character, history, activities or beliefs" that serious offense may reasonably be expected.[131] The threshold is calibrated to the plaintiff's actual social position rather than to an abstract assessment of the attributed characteristic, but it is high. Trivial misattributions — minor factual errors, passing misidentifications, the cosmetic touch-up in an otherwise accurate biographical sketch — are filtered out before the speech-cost question arises.

The fourth constraint is *actual malice*.[132] § 652E imposes liability on a defendant only where the defendant "had knowledge of or acted in reckless

---

[128] RESTATEMENT (SECOND) OF TORTS § 652E cmt. a (Am. L. Inst. 1977).

[129] *Id.* § 652D cmt. a, incorporated into § 652E by § 652E cmt. a.

[130] *Id.* § 652E.

[131] *Id.* § 652E cmt. c.

[132] I assume actual malice throughout this Article for two reasons: *Hill* requires it for matters of public concern, and importing the constitutional standard avoids creating a parallel substantive mens rea that the doctrine would then have to administer. Whether the misattribution interest, as a matter of substantive tort law independent of the First Amendment, would require a heightened mental state — and whether the *Gertz* fault standard might govern private-figure plaintiffs whose claims fall outside *Hill*'s scope, a question *Cantrell* declined to decide — I leave for

disregard as to the falsity of the publicized matter."[133] Comment d makes clear that this fault standard is the *New York Times / Hill* standard imported into the false light tort, and it applies to private as well as public-figure plaintiffs by virtue of the Supreme Court's holding in *Time, Inc. v. Hill*.[134] The misattribution interest does not relax this requirement. A defendant who reasonably believes the attribution to be true, even if the attribution turns out to be false, has no liability. The constraint is not merely procedural — it is constitutive of what the tort cares about. The wrong of misattribution is the wrong of being made to bear, in public, an identity the speaker had reason to know was not the plaintiff's. Innocent and negligent misstatement, however injurious, are outside the tort's domain.

The actual malice requirement carries with it a further consequence the Supreme Court has emphasized in a parallel line of cases. The Court has reiterated this proposition across a long line of cases — from *Garrison v. Louisiana* through *Hill*, *Cantrell v. Forest City Publishing*, *Masson v. New Yorker Magazine*, and most recently *United States v. Alvarez* — treating the "calculated falsehood" as carrying no First Amendment value of its own.[135] A statement made with knowledge of its falsity or with reckless disregard for the truth contributes nothing to the marketplace of ideas. The First Amendment's protection of false speech is a prophylactic protection for the *true* speech that would otherwise be chilled by the burden of verifying every assertion. Where the defendant already knows the assertion to be false, no such prophylaxis is needed. The actual malice requirement and the calculated falsehood doctrine are, in this sense, two faces of the same constitutional accommodation: the tort reaches only those false attributions that the First Amendment was never designed to protect.

Every constraint described above is already embedded in § 652E. The misattribution interest inherits them all.

3. Fact, Opinion, and Hard Cases.

The fifth constraint comes not from § 652E's text but from the First Amendment doctrine that § 652E incorporates through comment d.[136] Under

---

another occasion. *See supra* note 95 (discussing *Gertz* and the constitutional fault floor for private-figure defamation plaintiffs).

[133] *Id.* § 652E.

[134] *Id.* § 652E cmt. d (incorporating the First Amendment architecture developed in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and *Time, Inc. v. Hill*, 385 U.S. 374 (1967), into the false light tort).

[135] *See Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) ("the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection"); *Time, Inc. v. Hill*, 385 U.S. 374, 387–88 (1967); *Cantrell v. Forest City Publ'g Co.*, 419 U.S. 245, 253 (1974); *Masson v. New Yorker Magazine*, 501 U.S. 496, 510–11 (1991); *United States v. Alvarez*, 567 U.S. 709, 719 (2012) (plurality opinion) (acknowledging that defamation and the calculated falsehood lie outside the ordinary First Amendment protection of false speech).

[136] RESTATEMENT (SECOND) OF TORTS § 652E cmt. d (incorporating *New York Times Co. v. Sullivan* and *Time, Inc. v. Hill* into the false light tort).

Milkovich v. Lorain Journal Co., "a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection."[137] The constitutional line is not drawn at the surface form of the utterance. As *Milkovich* explained, "Simply couching such statements in terms of opinion does not dispel these implications; and the statement, 'In my opinion Jones is a liar,' can cause as much damage to reputation as the statement, 'Jones is a liar.'"[138] What matters is whether the statement is "sufficiently factual to be susceptible of being proved true or false."[139]

For the central cases this Article has discussed, the line is straightforward. A magazine cover falsely depicting an avowed liberal endorsing a Republican platform conveys a provably false factual proposition: that the plaintiff holds and has endorsed views she does not in fact hold. The same is true of the falsely constructed biography in *Spahn*, the fabricated radio profile in *Hinish*, and the synthetic political endorsement that artificial intelligence systems now make trivial to produce. These are not cases of contested opinion. They are cases of factual misrepresentation of identity-constitutive attributes, and they fall well within *Milkovich*'s zone of constitutionally unprotected falsehood.

Consider two hypotheticals.[140] In the first, a tabloid publishes a story falsely reporting that Brigitte Macron, the wife of the President of France, is in fact a man — that is, was assigned male at birth and has, for years, concealed her birth sex from the French public. The story does not present this as commentary or characterization. It presents it as a factual disclosure: here is the truth about who Brigitte Macron is. The statement is provably false. It is exactly the kind of attribution *Milkovich* identifies as susceptible of being proved true or false, and it is exactly the kind of attribution against which the misattribution interest protects.

In the second hypothetical, a commentator publicly refers to a transgender woman as a man and insists, on metaphysical and categorical grounds, that her gender is not what she takes it to be. The two cases are not symmetrical. The Macron hypothetical purports to disclose a concealed empirical fact about the subject's birth sex. The misgendering hypothetical advances a contested view about what categories like "man" and "woman" pick out, applied to the subject. The first is constitutionally unprotected because it traffics in a provably false factual proposition. The second falls on the opinion side of the *Milkovich* line because it does not assert a provably false factual proposition; it asserts a categorical or metaphysical claim about what the relevant category is.[141]

---

[137] *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990).

[138] *Id.* at 19.

[139] *Id.* at 21.

[140] I am grateful to Samuel Bray for raising this pair of hypotheticals in conversation, as a challenge to the misattribution interest.

[141] I am grateful to Jonathan Masur for pressing the fact/opinion distinction as the doctrinal hinge for these cases, and for noting that it does not cleanly resolve every hard case at the borderline. The argument in this Part is an attempt to show

The asymmetry is not produced by the misattribution interest. It is produced by *Milkovich*. The misattribution interest explains why the line falls in the doctrinally correct place: the Macron case involves an attribution that can be tested against the world, and the test is the very test that the falsity and actual malice elements of § 652E demand. The misgendering case involves a categorical claim that cannot be tested against the world in the same way, and the constitutional architecture protects the speech for that reason. Misattribution does not collapse the two; it shows why they belong on different sides of a line that the First Amendment already draws.

4. The Compelled Speech Analogy.

A different constitutional tradition lends further support. The compelled speech doctrine, developed in a line of cases from *West Virginia State Board of Education v. Barnette* through *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, holds that the government may not force individuals to profess beliefs they do not hold or carry messages they do not endorse.[142]

In *Barnette*, the Court struck down a compulsory flag salute, holding that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in . . . matters of opinion or force citizens to confess by word or act their faith therein."[143] In *Wooley v. Maynard*, the Court held that New Hampshire could not require citizens to display the state motto "Live Free or Die" on their license plates, reasoning that an individual may not be made "an instrument for fostering public adherence to an ideological point of view."[144] And in *Hurley*, the Court held that a private organization could not be compelled to include a group whose message the organization did not wish to convey.[145]

These cases involve state action; the misattribution tort involves private conduct. The analogy is therefore imperfect. But the analogy is illuminating nonetheless, because it identifies the *interest* that the constitutional order recognizes as worthy of protection: the interest in not being publicly associated with views, beliefs, or messages that are not one's own. *Barnette*'s "freedom of mind" is the interest in controlling what beliefs are attributed to you. *Wooley*'s prohibition on being made an "instrument" for another's

---

that the line nevertheless does the necessary sorting work for the central misattribution and misgendering cases, with the misattribution interest supplying the explanation for *why* that sorting gives the doctrinally correct result. An utterance that purports to disclose, for example, that a particular trans subject is "actually" a man because the speaker claims to have learned a concealed biological or biographical fact about her, presented as news to an audience, would track the Macron hypothetical more closely than the standard misgendering case. The *Milkovich* line is, as in all cases, a question of substance rather than of surface phrasing.

[142] *See West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995).

[143] *Barnette*, 319 U.S. at 642.

[144] *Wooley*, 430 U.S. at 715.

[145] *Hurley*, 515 U.S. at 572–73.

ideology is the interest in not being conscripted into a message you did not choose. The misattribution tort protects the same interest against private rather than governmental imposition. If the interest is weighty enough to constrain the state, it is at least weighty enough to ground a tort claim — subject, of course, to the constitutional limitations already built into § 652E.

5. Triviality and Limiting Principles.

A First Amendment objector might press a narrower variant of the "chilling speech" worry. Whatever the misattribution interest captures in cases like *Spahn*, the universe of legally cognizable false attributions includes plenty of trifles. Being called a Republican is an annoyance, not a legal injury. If the tort sweeps in trivial misattributions, the speech costs cannot be justified by the gravity of the harms.

The objection has intuitive force when the misattributed characteristic is stated in the abstract. But the abstract framing is misleading. As Part II argues, the harm of misattribution is not determined by the content of the false attribution considered in isolation. It is determined by the gap between the public identity that has been imposed and the public identity the plaintiff actually inhabits. Being falsely identified as a Republican is trivial in some communities and devastating in others — just as being falsely identified as a Democrat, a gun owner, or a vegan would be.[146] The standard is always particular. Its violation is felt in relation to the specific web of relationships, expectations, and self-conceptions the plaintiff inhabits, not in relation to an abstract "reasonable person" stripped of social context.

How deeply a misattribution cuts depends on how central the attributed characteristic is to the public identity the plaintiff actually inhabits. A hobbyist who writes occasional verse has a real but limited stake in being publicly associated with a particular poem; a professional poet whose vocation is the practice of poetry has more at stake when a poem not her own is attributed to her, because the attribution interferes more directly with the identity through which her public encounters her. The same holds for the party operative whose livelihood is partisan advocacy and the cleric whose office presupposes a faith commitment. This is a feature of the situated standard, not a defect of it. The misattribution wrong is measured against the identity the plaintiff actually inhabits, and identities differ in how deeply particular attributions cut.

This is not a novel principle. False light doctrine has always been context-sensitive in precisely this way. The Restatement's "highly offensive to a reasonable person" standard has never been applied in a vacuum; the comments specify that serious offense is measured from the perspective of "a reasonable man in his position."[147] The triviality objection confuses the abstract description of a misattribution ("called a Republican") with the

---

[146] *See* Part II.B (discussing the role of context in measuring the gap between imposed and inhabited public identity).

[147] RESTATEMENT (SECOND) OF TORTS § 652D cmt. c, incorporated into § 652E by § 652E cmt. a.

situated experience of it (an avowed liberal publicly depicted as endorsing a political platform she has spent her career opposing). The "highly offensive" threshold filters the first; the misattribution interest explains why the second is a genuine wrong.

Taken together, the constraints surveyed in this Part yield a compact set of limiting principles — three constraints that operate simultaneously to prevent the misattribution interest from becoming a general tool for suppressing speech.

First, *only provably false statements of fact, made deliberately or with reckless disregard for the truth*. The fact/opinion line, drawn by *Milkovich* and incorporated through comment d, excludes opinion, satire, characterization, and rhetorical hyperbole. The actual malice requirement excludes innocent and negligent misstatement. What remains is a narrow category: deliberate fabrications presented as fact. The line between a fabrication presented as fact and a tendentious characterization of true facts is hard at the margins, and *Milkovich* itself has been the subject of decades of doctrinal refinement. The misattribution interest does not pretend to draw that line more precisely than existing First Amendment doctrine; it accepts the line wherever doctrine has drawn it. The point here is only that the misattribution interest does not require relaxing it.[148]

Second, *wide dissemination*. The publicity requirement confines the tort to cases where the misattribution has actually shaped the plaintiff's public identity, excluding casual remarks, private correspondence, and limited-audience communications.

Third, *highly offensive to a reasonable person in the plaintiff's position*. Trivial misattributions are filtered out at the threshold. The standard is context-sensitive: what counts as highly offensive depends on the plaintiff's actual social world, not on an abstract assessment of the attributed characteristic. This is why the universe of actionable misattribution claims is far smaller than the universe of newspaper corrections: most published falsehoods fail

---

[148] A clearly labeled biopic, historical novel, or work of fiction that puts invented words in a living person's mouth typically fails the "presented as fact" requirement and so falls outside the tort, whatever its other moral or aesthetic costs. The frame of fiction signals to the reasonable audience that the depicted speech and conduct are not the subject's own. The harder cases are docudramas that blur the line, biopics whose paratextual claims of accuracy invite factual reception, and AI-generated content whose provenance is not disclosed. These cases turn on whether the reasonable audience would receive the depiction as factual, which is the same question *Milkovich* asks about opinion. The clearly fictional case is easy. The unclearly fictional case requires the same case-by-case analysis the fact/opinion line has always demanded. For an interesting recent case that did lead to litigation, consider the controversy around the wildly popular 2024 Netflix series *Baby Reindeer*. The series is a fictionalized telling of the real-life stalking of the actor who plays the lead. But each episode began with a black frame presenting only the text "This is a true story." Despite changing the names of the characters, audiences found out the identity of the real-life stalker almost immediately upon release, and she, unsurprisingly, contested some of the most outrageous and unflattering details in the series.

one or more of these filters — typically the actual malice requirement, which excludes the ordinary negligent error that newspaper corrections most often acknowledge.

None of these constraints is new. All are already embedded in § 652E as it has been applied for the past half century. This Article does not propose to relax any of them, nor to alter the elements of the tort or the constitutional overlay that governs it. What it offers instead is a different account of *what § 652E protects*: not residual privacy, but authorial control over public identity. That reframing leaves the black-letter rules intact while explaining the cases the privacy rationale cannot reach. The constitutional architecture remains exactly where the Supreme Court left it.

B. The Defamation-Absorbs-Misattribution Objection

1. The Objection Stated.

Courts that have abolished false light have not simply eliminated a cause of action. They have simultaneously expanded defamation to absorb the cases false light once covered. The question this raises is straightforward: if defamation can do the work, why recognize a separate interest?

The strongest version of this objection points to Florida's move in *Rapp*. The Florida Supreme Court rejected false light but adopted the "respectable minority" test for defamation — a statement is defamatory if it would lower the plaintiff's standing in the eyes of a "substantial and respectable minority" of the community.[149] Other jurisdictions have employed "defamation by implication" to reach similar results. If these expansions work, the misattribution interest may be theoretically interesting but practically unnecessary.

2. Why Expansion Distorts Defamation.

The expansion does not work — not without abandoning the conceptual commitments that make defamation a coherent tort.

Defamation, on any standard account, protects reputation. The question is what "reputation" means. Robert Post has identified three concepts of reputation that defamation law has at various times sought to protect: reputation as property (the market value of one's good name), reputation as honor (one's standing in a community of shared moral expectations), and reputation as dignity (the respect owed to a person as a participant in the social order).[150] All three concepts, despite their differences, share a common structure: the plaintiff's standing is *lowered* in someone's estimation. Reputation as property is diminished. Honor is degraded. Dignity is affronted. The directionality is essential. Defamation is, at its core, a tort about being made to look *worse*.

---

[149] *Rapp*, 997 So. 2d 1098, 1114–15 (Fla. 2008).

[150] See Robert C. Post, *The Social Foundations of Defamation Law: Reputation and the Constitution*, 74 CAL. L. REV. 691, 693–710 (1986).

The misattribution cases do not involve this directionality. Being publicly identified as a satisfied user of a product one has actually rejected does not make the plaintiff look worse — not in the eyes of the community at large, not in the eyes of any "substantial and respectable minority," and not in the eyes of any plausible professional subcommunity.[151] Being associated with a flattering but fabricated war record makes the plaintiff look *better*. The harm in each case is not that others think less of the plaintiff. It is that others think the plaintiff is someone the plaintiff is not.

The clearest empirical demonstration of that distinction comes from *Peoples Bank & Trust Co. v. Globe International Publishing, Inc.*[152] Globe's supermarket tabloid *The Sun* ran a fabricated story headlined "Pregnancy forces granny to quit work at age 101," illustrated with an archive photograph of Nellie Mitchell — a then-ninety-five-year-old newspaper carrier in Baxter County, Arkansas — purchased years earlier from a local paper.[153] Mitchell's conservator sued Globe for defamation, false light invasion of privacy, and outrage, and a single eight-person jury heard all three claims on identical evidence. The jury "found for Globe on the defamation claim," but returned unanimous verdicts for Mitchell on false light and outrage.[154] The Eighth Circuit affirmed on liability.[155]

The split is legible on the face of the doctrine. Defamation requires a reputation-lowering meaning; false light requires publicity placing the plaintiff in a position that is both false and highly offensive, with actual malice. The elements diverge, and the same evidence can satisfy one set without satisfying the other. Whatever reasoning moved the jurors, the structural point stands: a jury hearing the same facts on the same afternoon returned opposite verdicts on the two claims. That is not consistent with the view that false light is merely defamation under another name. It is consistent only with the view that the two torts protect different interests.

Benjamin Zipursky has recently developed what he calls an "ideational theory" of reputational injury: reputational harm occurs when third parties' ideas about the plaintiff are diminished, or when a person about whom others held no prior ideas comes to be the object of a negative set of third-party ideas.[156] On Zipursky's own account, then, the misattribution cases are not reputational injuries. Others' ideas about Spahn, Arrington, and Rapp have not been diminished, nor have they coalesced into a negative new set. They have come to hold *different* ideas — ideas that may be flattering, neutral, or offensive, but that in no case involve a diminution or negative shift in others' ideas that Zipursky's theory requires.

---

[151] *Fairfield*, 138 Cal. App. 2d 82 (the copy-machine endorsement case discussed *supra* note 110).

[152] *Peoples Bank & Trust Co. v. Globe Int'l Publ'g, Inc.*, 978 F.2d 1065 (8th Cir. 1992).

[153] *Id.* at 1066–67.

[154] *Id.* at 1066, 1067.

[155] *Id.* at 1070.

[156] Benjamin C. Zipursky, *Defamation, Presumed Damages, and Reputational Injury: A Legal and Philosophical Inquiry*, 4 J. FREE SPEECH L. 797, 806–14 (2024).

The "respectable minority" test adopted in *Rapp* attempts to solve this problem by widening the audience: a statement is defamatory if *some* subcommunity would lower its estimation of the plaintiff. The difficulty is not that subcommunities are unreal. They are real, and reputation within them is real. The difficulty is that widening the audience does not change what is being measured. However the audience is defined — the community at large, a substantial and respectable minority, the plaintiff's professional peers — the inquiry is still whether *that* audience lowers its estimation of the plaintiff.

The misattribution cases sit outside that inquiry. *Spahn*'s fabricated war record raises estimation among the audiences likeliest to care. *Arrington*'s photograph alongside a thesis he rejects does not lower estimation among Black professionals; it associates him with views he disclaims. *Rapp*'s purported conversion does not lower estimation in the Jewish community on any conventional reputational measure; it falsely places her in a religious community to which she does not belong. Kenneth Simons has pressed a related concern: the question "defamatory in whose eyes?" requires courts to choose among the perspective of the community at large, the plaintiff's subcommunity, and the plaintiff herself, a choice defamation doctrine has never cleanly resolved.[157] What the misattribution cases show is that no answer to that question rescues the absorption strategy, because the harm in these cases is not lowered estimation in any of those audiences' eyes.

3. Authorial Control Is Not Reputation.

The authorial control framework developed in Part II explains why the absorption strategy fails. Defamation damages *reputation*, others' estimation of the plaintiff's qualities. Misattribution usurps *authorial control over public identity*, the plaintiff's standing to determine which false identities can be imposed on her in public.[158] These are different interests. Reputation can be damaged without misattribution: a true but damaging disclosure lowers estimation without imposing any false public identity at all, however it may bear on privacy or other interests. And misattribution can occur without reputational damage: a flattering fabrication imposes an unauthorized false public identity without lowering anyone's estimation of the plaintiff.

Rapp illustrates the distinction precisely. Being falsely depicted as having embraced Jews for Jesus does not lower Edith Rapp's reputation among the "average person" — the Florida lower courts were right about that. But it imposes on her a public identity she did not author and would not have

---

[157] Kenneth W. Simons, *Defamatory in Whose Eyes?*, 4 J. FREE SPEECH L. 761, 762–63 (2024).

[158] The interest in controlling *what is publicly known* about oneself, as distinct from the interest in not having *false* identities imposed, sounds in privacy rather than misattribution. The two interests are neighbors, both housed in the Restatement (Second) of Torts chapter on invasion of privacy: § 652D protects against disclosure of true private facts; § 652E protects against false light. The argument in this Part concerns only the misattribution interest in § 652E.

written: a public identity as a convert, in a community where that identity carries a meaning "reputation" in the defamation sense does not capture. *Arrington* illustrates it from the other direction. Being associated with a magazine article about the Black middle class does not lower Clarence Arrington's standing by any measure. But it associates him with views he rejects, conscripting his image into a public identity he did not write and would have disowned. The harm is to authorial control, not to estimation.

The cleaner doctrinal response is to recognize the misattribution interest directly rather than distorting defamation to absorb it. Defamation should remain what it has always been: a tort about being made to look worse. The misattribution interest covers the cases where the plaintiff has been made to look *different* — and where that difference, in the plaintiff's actual social world, constitutes a genuine injury.

C. The Misattribution-Absorbs-Defamation Objection

1. The Objection Stated.

The previous Part answered an objection of long standing: that defamation can absorb the cases the misattribution interest captures. A symmetrical objection now comes into view. Defamation, as well as false light on the misattribution reading, both involve a misattribution, but defamation requires something more. It requires the distinctive showing of a reputational injury — that the attribution lowered the plaintiff's standing in some relevant community of estimation. Misattribution, by contrast, requires no such showing. It is, on that basis, easier to prove. If the plaintiff can plead misattribution and bypass the reputational inquiry entirely, why prove diminishment at all? On this view, misattribution is not a separate wrong. It is defamation with an inconvenient element stripped out — and once a plaintiff can choose the cheaper path, defamation as a calibrated doctrine collapses.[159]

The objection is compelling. Defamation's structure — the reputational requirement, the various community-standard tests jurisdictions have developed, the constitutional overlay built up since *Sullivan* — is the product of decades of doctrinal calibration. A misattribution tort that can be pleaded around all of it would not merely supplement defamation; it would render defamation's calibration irrelevant. Plaintiffs would simply choose misattribution and the calibration would lapse from disuse.

2. Why Misattribution Does Not Absorb Defamation.

But misattribution and defamation are not competing. They are something more like two wrongs that lie on a continuum, where one is harder to prove and requires a higher showing, but also avails the plaintiff of greater remedies because there is not just the misattribution but also a distinctive reputational component that is damaging. Misattribution, on this

[159] I am grateful to Danny Cordray for pressing this worry in conversation.

view, is not absorbing defamation but instead operating as a typically lesser wrong, requiring a lesser showing to prove, and leaving the plaintiff with a correspondingly more modest remedy than if she were able to prove full defamation.[160]

A criminal law analogy is illustrative. First-degree murder, second-degree murder, manslaughter, and involuntary homicide are all wrongful killings. Each requires the basic killing element. Each layers on additional elements — premeditation, malice, recklessness, negligence — that simultaneously raise the prosecution's burden and unlock more severe sentences. We do not say that involuntary manslaughter absorbs first-degree murder because the lower offense is easier to prove. The lower offense lacks the elements that warrant the higher penalty. A prosecutor who can prove premeditation pursues first-degree murder because the higher offense, where the evidence supports it, unlocks remedial responses commensurate with the increased gravity of the wrong.[161]

The same logic governs misattribution and defamation. A plaintiff who can prove diminishment alongside misattribution pursues defamation because the higher tort unlocks remedies commensurate with the gravity of the wrong. A plaintiff who cannot prove diminishment — as in *Spahn*, *Hinish*, the avowed liberal recast as Republican — pursues false light because misattribution is the wrong that occurred. Neither tort displaces the other. They mark different points on the continuum.

3. The Pleading Choice Worry, Bounded.

One feature of the objection nonetheless deserves further attention. It is true that some plaintiffs will face a genuine pleading choice: where the defendant has both misattributed an identity constitutive characteristic and lowered the plaintiff's standing in doing so, both torts apply. The objection imagines plaintiffs in this zone gaming the system by pleading misattribution to avoid defamation's heavier burden.

The worry is overstated. A plaintiff who can prove diminishment has no incentive to forgo defamation's larger remedies merely to avoid the proof burden, because the burden will usually be satisfied by the same evidence that establishes the diminishment. The choice is real only for the plaintiff who cannot prove diminishment — and that plaintiff has only the misattribution claim available in the first place. There will rarely be room for doctrinal arbitrage.[162] The pleading choice exists where it does because the underlying

160 I am grateful to Samuel Bray for suggesting this approach to reconciling misattribution with defamation without allowing defamation to fall into the maw of misattribution.

161 I am grateful to Aviv Caspi for suggesting this analogy.

162 One can, of course, imagine cases in which the misattribution is easy to prove but the question of diminishment is harder to answer. But even if such cases are more frequent than we suspect, they do not generate arbitrage so much as honest litigation over a genuinely contested element. A plaintiff who pleads misattribution because she cannot confidently prove diminishment is not gaming

wrongs genuinely overlap, and the higher remedy tort is reached precisely by satisfying the additional element that defamation requires.

The objection thus fails to find its target. Misattribution does not strip defamation of inconvenient elements. It occupies the segment of the continuum that defamation has never reached. Defamation retains its full doctrinal structure for the cases where diminishment can be shown. The two torts work in the same way that the gradations of homicide work: they describe related wrongs at different intensities, calibrated together by proof requirements that match the remedies each unlocks.

D. The Misattribution-Absorbs-Pseudo-Disclosure Objection

1. The Objection Stated.

Parts III.B and III.C addressed objections that ran between misattribution and defamation. A different objection comes into view at the privacy edge of false light. Goldberg and Zipursky's pseudo-disclosure account and the misattribution account developed here both treat false light as protecting a real interest, but the boundary between them is not clean. In the cases Goldberg and Zipursky describe at 484–85 — the disease, victimization, and sexual-orientation cases discussed in Part I.C.3 above — the misattribution account reaches the same plaintiffs by a different route. The same observation can be pressed further. Wherever a false attribution simultaneously imposes a public identity the plaintiff rejects and creates an unwanted public picture of her private life, the misattribution wrong is present. If misattribution can reach into the pseudo-disclosure category whenever it likes, why retain pseudo-disclosure as a distinct account at all? On this view, the misattribution interest absorbs Goldberg and Zipursky's category and renders it superfluous.

2. Why Misattribution Does Not Absorb Pseudo-Disclosure.

The objection presses on a real overlap but draws the wrong conclusion from it. The clearest case is the deepfake sex video. A fabricated video depicting the plaintiff in a sexual act involves misattribution — the plaintiff is publicly associated with conduct she did not engage in — but the wrong is not exhausted by misattribution. The video creates a vivid public perception of the plaintiff's intimate life, with the audience taking itself to have seen what intimate life would look like. That perception is the distinctive pseudo-disclosure wrong. The misattribution account captures the imposition of a false public identity; the pseudo-disclosure account captures the additional violation of having one's intimate life staged for public consumption. Both wrongs are present, and the second is not derivable from the first.

Pseudo-disclosure thus picks out a genuine wrong that misattribution alone does not reach. The interest is not merely against being publicly

---

the system; she is selecting the claim whose elements her evidence actually fits. That is what well-designed cause-of-action menus are supposed to do.

associated with the attributed conduct, but against having the audience take itself to be witnessing the plaintiff's intimate life. Where the false attribution is of a fact that is not in itself intimate — political affiliation, authorship, public conduct — only the misattribution wrong is present. Where the false attribution stages an intimate fact for public consumption, both wrongs are present, and the gravity of the violation is correspondingly higher.

3. Overlap and Its Doctrinal Consequences.

The right description of the relationship is dual-function with overlap. Misattribution and pseudo-disclosure mark distinct wrongs that may both be present in a single case. In the disease, victimization, and sexual-orientation cases Goldberg and Zipursky take up, the overlap is partial: pseudo-disclosure reaches the case only where the jurisdiction recognizes the attributed fact as private, while misattribution reaches the case in any jurisdiction whose law of false light recognizes the broader wrong. In the deepfake sex video, the overlap is full and aggravating: both wrongs are present, and the worst examples of false light invasion lie in this zone of overlap.

The doctrinal payoff is modest but real. Where both wrongs are present, the case is graver, the harm more profound, and the remedy should reflect that. Some jurisdictions already do this work through aggravated damages, increased presumed damages, or the gravity-of-the-harm reasoning that animates emotional-distress add-ons. This Article does not propose a new doctrinal vehicle. It identifies the structural overlap and lets courts work out the form of recognition appropriate to their existing remedial architecture.

E. Implications

1. For Courts Retaining False Light.

The majority of American jurisdictions continue to recognize false light as a cause of action.[163] For these courts, the misattribution interest provides a second, independent justification for the tort — one that is immune to the objection that false light is merely shadow defamation or shadow privacy.

The standard criticism of false light, from Zimmerman onward, has been that the tort lacks a coherent account of the interest it protects. Goldberg and Zipursky answer that criticism for one class of cases: those involving pseudo-disclosures of putatively private facts. This Article answers it for the other class: those involving public misattribution of characteristics the plaintiff does not possess. Together, the two accounts explain why § 652E's illustrations cover both privacy-type and non-privacy-type cases. The Restatement drafters were right to include both. What they lacked — and what the combination of Goldberg and Zipursky's framework and the

[163] *See* Goldberg & Zipursky, *supra* note 8, at 471 (observing that false light "remains on the books in most jurisdictions" even as it is "on the ropes").

framework developed here supplies — was a clear articulation of the distinct interests at stake.

Courts retaining false light can therefore recognize that § 652E protects two interests under a single doctrinal roof: the pseudo-disclosure interest (the interest in controlling what the public believes about one's private life) and the misattribution interest (the interest in not being publicly associated with characteristics that are not one's own). The elements of the tort — wide dissemination, highly offensive to a reasonable person, knowledge or reckless disregard of falsity — serve both interests simultaneously. No doctrinal modification is required. What changes is the theoretical understanding of what the tort is for.

2. For Courts That Have Abolished False Light.

The implications for jurisdictions that have done away with false light are more disruptive. Courts that eliminated false light assumed that defamation could absorb the work. This Article has argued that it cannot — not without abandoning defamation's core limiting principle. The "respectable minority" test and "defamation by implication" are workarounds, not solutions. They stretch defamation to cover harms it was not designed to reach, and in doing so they erode the conceptual boundaries that make defamation a workable tort.

Two paths are available. The first is to revive false light — or a variant of it — with an explicit dual-interest justification. A jurisdiction that rejected false light because it appeared to be shadow defamation might reconsider once the misattribution interest has been clearly distinguished from both the privacy interest and the reputational interest. The second path is to recognize a narrower, targeted cause of action for public misattribution, without reviving false light as such. Such a cause of action could incorporate the same elements — wide dissemination, highly offensive false statement of fact, knowledge or reckless disregard of falsity — while grounding the tort explicitly in the misattribution interest rather than in the privacy interest that false light's critics found unconvincing.[164]

What is not available, if this Article's argument is correct, is the status quo in jurisdictions that have abolished the tort — a regime in which defamation is stretched to cover misattribution harms while pretending that

[164] This Article does not take a position on which path is preferable. Each has costs. Reviving false light preserves doctrinal continuity and inherits a half century of constitutional refinement, but it also inherits the "shadow defamation" stigma that led to abolition in the first place. A freestanding misattribution tort would be doctrinally cleaner — grounded explicitly in the interest it protects — but would require courts or legislatures to build new doctrine from the ground up. (To borrow Bray's metaphor, it would proliferate doctrinal "garlic presses," narrow tools designed to do one thing, where a more capacious "chef's knife" might be preferable in a judge's hands. *See* Bray, *Doctrines That Do Many Things*, *supra* note 14.) The choice depends on institutional considerations that vary across jurisdictions. This Article's contribution is to identify the interest that needs protecting, not to prescribe the vehicle.

no expansion has occurred. The expansion is real, and it comes at a cost to defamation's internal coherence. Acknowledging the misattribution interest as distinct is the first step toward a cleaner solution.

3. Urgency in the Era of Deepfakes.

Goldberg and Zipursky suggest that a more rigorous Restatement might have omitted the Byron and war-hero illustrations as quaint outliers. But the opposite inference is more compelling: those cases were not relics to be discarded but early instances of a problem now experiencing a rapid apotheosis in deepfakery. The poet to whom another's verse is attributed and the war hero given a fabricated romance are structurally identical to the political candidate given a fabricated endorsement by AI-generated video. The Restatement drafters were not confused. They were prescient.

Goldberg and Zipursky are right that the deepfake era makes false light's availability especially urgent.[165] Their pseudo-disclosure framework handles one category of deepfake harm well: nonconsensual intimate imagery, in which a fabricated video creates the same unwanted public perception of a person's private sexual life that a real video would create.[166] But a second category of deepfake harm falls outside the pseudo-disclosure framework entirely: fabrications that associate real people with views, products, endorsements, or affiliations they reject, where the attributed content is not private.

Consider an AI-generated video of a political candidate endorsing a policy she opposes. Or a synthetic audio clip of a CEO announcing a product recall that never happened. Or a fabricated image of a private citizen at a rally for an organization he has never joined. In none of these cases has a private fact been disclosed, even constructively. The "if true" test eliminates them: if the candidate really had endorsed the policy, that would be public news, not a privacy invasion. These are not pseudo-disclosure cases. They are misattribution cases. And the misattribution interest is the tort-law concept best positioned to reach them.

Current legal responses to non-intimate deepfakes are patchwork at best. Several states have enacted deepfake-specific statutes, but these tend to target either election interference within narrow temporal windows or nonconsensual intimate imagery.[167] Federal proposals like the NO FAKES Act address commercial exploitation of likeness but do not reach the non-

---

165 Goldberg & Zipursky, *supra* note 10, at 462.

166 *See* Danielle Keats Citron, *Sexual Privacy*, 128 YALE L.J. 1870, 1934–35 (2019).

167 *See* Douglas Harris, *Deepfakes: False Pornography Is Here and the Law Cannot Protect You*, 17 DUKE L. & TECH. REV. 99, 103 (2019) (surveying the inadequacy of existing legal frameworks for deepfakes); Matthew B. Kugler & Carly Pace, *Deepfake Privacy: Attitudes and Regulation*, 116 NW. U. L. REV. 611, 629–33 (2021) (documenting public attitudes toward deepfake regulation and the gap between perceived wrongfulness and available legal remedies); *cf.* Olivia Wall, *A Privacy Torts Solution to Postmortem Deepfakes*, 100 WASH. U. L. REV. 885, 900–02 (2023) (arguing for extending false light to cover deepfakes of deceased persons).

commercial, non-intimate deepfakes that the misattribution interest covers.[168] The tort law gap is real, and it will widen as the technology improves.

This Article does not claim that the misattribution interest, standing alone, solves the deepfake problem. Deepfakes raise issues of scale, anonymity, and jurisdictional reach that no single tort doctrine can address. But the misattribution interest provides something that is currently missing: a doctrinal concept, grounded in existing tort law and tested by existing constitutional constraints, that names the wrong involved when a person's public identity is fabricated and disseminated without their consent. No published appellate case, as of this writing, has addressed AI-generated misattribution under a false light theory. When such cases arrive — and they will — the framework developed here offers courts a way to think about what is at stake.[169]

CONCLUSION

Let us return to where we started. In 1967, the New York Court of Appeals held that Warren Spahn had been wronged by a biography that made him look better than he was. The court could not fully explain why. The Appellate Division had gestured toward an interest in not being "exposed, without his control, to biographies not limited substantially to the truth" — but the gesture remained undertheorized, and the tort under which Spahn recovered would spend the next half century under attack for lacking a coherent account of the interest it protected.

Goldberg and Zipursky's recent analysis of false light as a bona fide privacy tort grounded in pseudo-disclosure has now supplied that account — for one class of cases. Their framework explains why giving widespread publicity to fabricated private facts is a wrong of the same kind as giving widespread publicity to true private facts. The framework is persuasive and important.

But the framework also reveals, by exclusion, a second class of cases that false light has historically covered — cases in which the attributed characteristic, if true, would disclose nothing private. The Republican falsely identified in a petition. The financial analyst whose photograph is associated with views he rejects. The baseball player given a war record he did not earn. These are not privacy cases. But they are not trifles. They involve a genuine

---

[168] Nurture Originals, Foster Art, and Keep Entertainment Safe Act (NO FAKES Act) of 2025, S. 1367, 119th Cong. (2025). The Act creates a federal right of publicity for digital replicas of an individual's voice or visual likeness, with exclusions for news, documentary, and First Amendment–protected uses. *See id.* § 2(a)–(b), (f). It does not address false attributions of views, beliefs, or affiliations that do not exploit the plaintiff's likeness for commercial purposes.

[169] Kugler and Pace's empirical work is suggestive on this point. Their studies found that nonpornographic deepfakes were perceived as substantially less wrongful than pornographic ones when labeled as fictional, but still perceived as wrongful when presented as factual. *See* Kugler & Pace, *supra* note 167, at 643–47. The gap between perceived wrongfulness and available legal remedies is precisely the gap the misattribution interest fills.

wrong: the public imposition of a false identity on a person who did not choose it.

This Article has called that wrong the misattribution interest and has grounded it in the plaintiff's interest in authorial control over the public identity through which others encounter her. The interest is distinct from privacy, distinct from reputation, and distinct from the emotional tranquility interest that earlier accounts invoked without fully defending. It survives the First Amendment objection because the constitutional architecture already built into § 652E — falsity, wide dissemination, the highly offensive threshold, actual malice, the fact/opinion distinction — constrains it in precisely the ways the First Amendment requires. And it explains why expanding defamation to absorb the eliminated cases distorts defamation rather than solving the problem.

The need for this account will only sharpen. The same technology that makes Goldberg and Zipursky's pseudo-disclosure framework urgent for deepfake intimate imagery makes the misattribution interest urgent for the other half of the deepfake problem — fabricated endorsements, synthetic political speech, AI-generated associations with views and affiliations the subject rejects. Existing legal responses do not reach these cases. The misattribution interest does.