



HISTORICAL PRESENCE IN VISUAL CULTURE

Contemporaneity

Vol 3, No 1 (2014) | ISSN 2155-1162 (online) | DOI 10.5195/contemp.2014.96
<http://contemporaneity.pitt.edu>

Culture v. Capital

The Rebecca Belmore Case

India Young

Abstract

This paper considers a civil suit between an artist and her former gallery dealer. In the case of *Nadimi v. Belmore*, the plaintiff and the defendant exemplify two opposing ideologies, which in turn reflect two possibilities for understanding art. This paper considers the case, and Belmore's artworks as representative of both systems. Through a strategic defense of her art and her practice, Belmore upholds a complex understanding of the value of art. The current legal system, however, only ascribes art value as commodity product. This paper demonstrates how Belmore's actions and artworks related to the case supersede simple categorization. Her works cannot be corralled into any one classification; they are not only fine art, nor simply First Nations art. The article exposes how her works deploy multiple socio-cultural systems simultaneously: from an Anishnabe worldview, to European-Canadian art history, from the public museum, to the commercial gallery, to the Toronto bound freeway. I contend that this strategic employment of multiple systems is recognized in newly established international law, and articulated in the United Nations Declaration of Indigenous Peoples as traditional knowledge. The Belmore case illustrates the immediate need for governmental systems to acknowledge and employ such international law in order to redress systemic misconceptions of Indigenous arts practices.

About the Author

Somewhere between her Alaskan home, her New York college education, and peace riots in La Paz, India Young decided art best expresses activism. She returned to school to learn the practice of sharing her passions. In 2011, she graduated from the University of Victoria with a Master's degree in the history of art, and today she continues on her course as a doctoral candidate in art history at the University of New Mexico. Young researches print media, contemporary Indigenous arts, and activist art. Her curatorial pursuits focus on the spaces of interconnection between Indigenous arts and the larger world.

Culture v. Capital

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India Young

To address oneself to the other in the language of the other is, it seems, the condition of all possible justice . . . the violence of an injustice has begun when all members of a community do not share the same idiom throughout.

Jacques Derrida¹

"I quit!" bellowed Rebecca Belmore to conclude her performance *WORTH (A Statement of Defiance)* at the Vancouver Art Gallery in September 2010. The twenty-minute piece was performed at the door of

the former courthouse-turned-gallery, as one of the Anishinabe artist's responses to the legal battle between herself and her former Toronto dealer, Pari Nadimi. In 2005, Belmore terminated her professional relationship with Nadimi and requested the return of her artworks from the gallery. As the dealer was in the process of negotiating the sale of one of these works, *Ayum-ee-aawach Oomama-mowan: Speaking to Their Mother*, to the National Gallery of Canada, a disagreement arose between the parties and the sale was never brokered. The disagreement led to legal mediation, which failed. Nadimi filed civil suit against Belmore and claimed punitive damages and loss of potential sales in the amount of 1.1 million dollars.²

While disputes between artists and dealers are not uncommon in the art world, the defendant's methodology to address her case publically was unique. The plaintiff and the defendant in this suit represent two opposing cultural ideologies, which in turn reflect two differing systems of power. Through civil suit, Nadimi employed the prevailing system of governance. Fortunately for her, this system is structured to favor commerce and capital over personhood.³ Belmore was forced to contend against this same system, which she has sought to contest through her work. This paper considers two differing systems of social thought exemplified by this case. The suit, quietly settled out of court in 2013, illustrates how the invocation of these two systems affirms historic and current power structures. This paper argues that the prevailing system fails to fully recognize the various kinds of value—apart from capital—that Belmore creates through her works.

I consider Nadimi and Belmore in relation to the systems they employed to argue their cases as plaintiff and defendant. While Nadimi solely employed the arm of the law, Belmore's artistic actions constitute a strategic, public defense against the objectification of her work. These actions included a legal defense, public appeal, and collaboration between herself, other artists, and her supporters. I further argue that these strategies of defense demand a more complex and interconnected understanding of artworks, artistic practice, and life-ways than the current court system recognizes. This paper reveals a broader

¹ Jacques Derrida, "Force of Law: the Mystical Foundation of Authority," in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld and David Carlson (New York: Routledge, 1992), 17.

² Marsha Lederman, "The story behind Belmore's 'I Quit' performance," *The Globe and Mail*, September 22, 2010, accessed February 14, 2013, <http://www.theglobeandmail.com/arts/the-story-behind-rebecca-belmores-i-quit-performance/article4326740/>.

³ Peter Kulchyski, "Theses on Aboriginal Rights," *Unjust Relations: Aboriginal Rights in Canadian Courts* (Toronto: Oxford University Press, 1994), 1–20.



Figure 1:

Rebecca Belmore, *WORTH (A Statement of Defiance)*, 2010. Performance still. Courtesy of Harold Coego.

understanding of Belmore's artworks and actions that relate to the case. I consider Belmore's works in relation to an Indigenous cosmology that is often referred to in academic and legal discourses as "Indigenous knowledge," "cultural knowledge," or "traditional knowledge." Such a broad concept is not fixed, but fluid, or dynamic, and underlies Aboriginal ways of understanding the world. J. M. Flavier generalizes:

Indigenous Knowledge is . . . the information base for a society, which facilitates communication and decision-making. Indigenous information systems are dynamic, and are continually influenced by internal creativity and experimentation as well as by contact with external systems.⁴

To consider Belmore's artworks as illustrative of or participating in an Indigenous, or traditional knowledge system, is to value them as cultural expressions. The Euro-Canadian court system would have her works recognized solely as "art," which is only ascribed a monetary value. Meanwhile, an Indigenous way of knowing considers Belmore and her works as representative of broader concepts of *worth*. In this system there is intrinsic value in knowledge gained or shared through objects, in relationships within and between communities, and in the representatives of cultural expression.

Through her legal action, Nadimi has successfully employed the prevailing Euro-Canadian legal system to relegate Belmore's artistic expressions to one economically quantifiable category. The Canadian legal system, as with many socio-cultural systems in Canada, is predicated on reductionism. Reductionism, like Indigenous knowledge, is a broad

⁴ L. J. Slikkerveer, David Brokensha, Wim Dechering, and Dennis M. Warren, *The Cultural Dimension of Development: Indigenous Knowledge Systems* (London: Intermediate Technology Publications), 479.

cultural concept that underpins larger social understanding. It purports that a complex system can be understood when reduced to the sum of its parts.⁵ In terms of the legal process, reductionism manifests in the assertion that complex understandings can be discretely categorized for the benefit of the outcome. With regard to Nadimi and Belmore, the complaints of a civil suit were compartmentalized in relation to an object-based valuation and translated into economic terms.

The bones of the case, and of this paper are these: Rebecca Belmore is an acclaimed artist, who has been celebrated nationally and internationally for her works which comment on the contemporary state of Indigenous peoples. As happens more than the art world openly acknowledges, a gallery owner representing Belmore sold her works on commission, but reportedly failed to pay the artist the verbally agreed upon compensation.⁶ When Belmore chose to remove her works from the gallery, a dispute arose, and when mediation failed, both parties were compelled to obtain legal representation to protect and advance their respective positions.⁷ The dispute, which began in 2004, continued through the various stages of litigation until it was quietly settled out of court in 2013.⁸ Both parties were unable to discuss their legal actions while the case was ongoing, and have been silent about the terms of the settlement.⁹ Regardless of these legal conditions Belmore demonstrated her position towards the suit publicly, while Nadimi declined to make comment through any public channels. Disclosure issues within the Canadian legal system have led to varied and patchy media coverage making the facts of the case difficult to substantiate. However, my scholarship—as with Belmore’s defense—is not tied to the facts of the case itself, but to the broader issues of representation and voice faced by Indigenous artists. As I will show, the suit’s resolution impacts not only all Canadian artists, but affirms current capitalist based notions of art only as commodifiable object. Nevertheless, as Belmore has not quit the “business” of cultural representation, her works and actions continue to uphold an Indigenous worldview, and theoretically, a global legal doctrine.

⁵ Reductionism was originally a seventeenth century philosophic and scientific theoretical framework. Scholars today consider the ramifications of this theoretical framework as foundational to European socio-cultural systems. For more information see Terrance Brown, and Leslie Smith, “Reductionism and the Development of Knowledge,” Jean Piaget Symposium Series (Mahwah, N.J.: L. Erlbaum, 2003).

⁶ Don Ahnansisi McIntyre’s blog discusses this issue of an oral contract between the artist and the dealer. See “Rebecca Belmore, Priceless Stories,” *Law, Art, and Indians*, December 13, 2011, accessed February 18, 2013, <http://law-art-and-indians.blogspot.ca/2011/12/normal.html>. Other media sources give a more broad overview of the dispute. See Kevin Griffin, “Rebecca Belmore: Billboard keeps issue alive,” *Vancouver Sun*, December 6, 2011, accessed February 18, 2013, <http://blogs.vancouversun.com/2011/12/06/rebecca-belmore-billboard-keeps-issue-alive/>.

⁷ Email exchange between author and original mediation lawyer, January 27, 2014.

⁸ Media coverage of the suit is inconsistent about its origin date. Most sources originate the suit in 2005. Marsha Lederman who wrote about the case herself first notes the suit began in 2004 (the earliest date in public record), and later states that the suit was not filed until 2007 (Marsha Lederman, “B.C. artist takes her legal woes to the level of performance art,” *The Globe and Mail*, September 15, 2010, accessed February 18, 2013, <http://www.theglobeandmail.com/arts/bc-artist-takes-her-legal-woes-to-the-level-of-performance-art/article4190034/#dashboard/follows/>; Lederman, “The story behind Belmore’s ‘I Quit’ performance.”

⁹ Terms of the settlement likely included a mandate of confidentiality, as insinuated by Belmore’s only statement about the case. This enforced silencing speaks to the success of SLAPP suits, the type of litigation employed by Nadimi. See Stephen Thomson, “Long-time Vancouver artist Rebecca Belmore wins Governor General’s award,” *The Straight*, March 12, 2013, accessed January 20, 2014, <http://www.straight.com/arts/360881/long-time-vancouver-artist-rebecca-belmore-wins-governor-generals-award>.

In this paper I first consider the legal mechanism enacted by Nadimi through civil suit. I then consider Belmore's public defense, and her artistic productions as expressions of her Indigenous worldview. To consider Belmore's artworks through this lens is to affirm their complex and dynamic nature. In 2007 the United Nations, through the Declaration on the Rights of Indigenous Peoples, officially recognized this "Indigenous" or "traditional" knowledge as something that demands special protection. While the case against Belmore was quietly settled out of court in 2013, Belmore and her works continue to express complex, dynamic connections between personhood, artistic expression, and cultural knowledge. This civil suit and its outcome illustrate the need to legally recognize how traditional knowledge is expressed within the dominant Euro-Canadian systems. This paper finally contends that the importance of the United Nations Declaration only becomes legible through its real world applications, and it reframes Belmore's case in terms of the inherent legal rights of an Aboriginal person under the Declaration.

The Position of the Plaintiff

After failed private mediation, Pari Nadimi hired the powerful Toronto law firm, Heenan Blaikie. The suit was first filed in 2004, and escalated in 2006, and again in 2010.¹⁰ Nadimi and her lawyers have never spoken publically about the case. Conversely, Belmore's defense continually sought to reach beyond the court into the public sphere as public protest. Two lawyers volunteering their services represented Belmore, who repeatedly noted that her financial situation made the suit a literal taxation upon her person.¹¹ In an effort to rally resources, Belmore's friends and colleagues began the Rebecca Belmore Legal Defense Fund in 2010. The Fund organized a charity art auction, solicited donations, and used social networking to raise public awareness, but failed to garner significant financial contributions.¹² In 2012, Belmore continued her public defense through another performance piece at the Art Gallery of Ontario.¹³ In 2013 the case was settled out of court.

The choice to file civil suit enacts a particular Euro-Canadian approach to conflict resolution. Yet, Pari Nadimi is herself a cultural minority in Canada. A first generation

¹⁰ Lederman, "B.C. artist takes her legal woes to the level of performance art," and "The story behind Belmore's 'I Quit' performance."

¹¹ The sign, "I am worth more than one million dollars to my people," solidifies the personification of monetary value of the suit as an art object. In several quotations in the media Belmore reiterated, "Even though I've had all this critical success, it doesn't necessarily boil down into dollars... As an artist, I'm not obsessed with making a lot of money. I'm more obsessed with being a good artist and trying to contribute to culture. I'm not out to make a million dollars. 'Cause I'm worth much more than that - as the sign says," Lederman, "The story behind Belmore's 'I Quit' performance"; "I'm being sued for a large amount of money and in making the sign, I'm just saying that as an artist, what I do goes beyond money... The idea that someone can place a value on an artist's work is very problematic and is very insulting because it devalues it in some way," Mallory Clarkson, "Million Dollar Message," *London Community News*, December 8, 2011, accessed February 19, 2013, <http://www.londoncommunitynews.com/news-story/1356289-million-dollar-message/>. See also Leah Sandals "Legal action sparks art auction." *The Star*, February 23, 2011, accessed February 18, 2013, http://www.thestar.com/entertainment/2011/02/23/legal_action_sparks_art_auction.html; Andrea Carson, "Artist Rebecca Belmore sued by Toronto dealer," September 15, 2010, accessed October 06, 2012, <http://viewoncanadianart.com/2010/09/15/artist-rebecca-belmore-sued-by-toronto-dealer/>; Paul Chaat Smith, "Delta one Fifty," in *Vision, Space, Desire: Global Perspectives and Cultural Hybridity* (Washington, D.C.: National Museum of the American Indian, Smithsonian Institution, 2006), 31–40.

¹² Email exchange between author and Scott Watson, Director of the Fund, March 4, 2013.

¹³ Mathieu, "Artist Rebecca Belmore becomes part of the show at AGO."

immigrant from Iran, she spent time in Italy cultivating her art career before opening her gallery in Toronto in 1998. As she could not be reached for interviews, her actions, like Belmore's performances, must speak as her words. By enacting a lawsuit against Belmore, Nadimi affirmed her trust in the totalizing power and authority of Canada's legal system in favor of its capitalist and reductionist underpinnings. In her statement of claim, Nadimi sought monetary restitution for potential (rather than actual) sales, sought punitive damages as assessed in pecuniary terms, and suggested that Belmore's participation at the Venice Biennale was something economically quantifiable.¹⁴ The conflation of Belmore's actions with her artworks in the statement of claims reveals Nadimi's underlying intent to regulate and control Belmore's personhood as a commodity product.

This intention can be framed within the specifics of civil litigation, as well as the larger legal frameworks that constrain Aboriginal peoples. Writing on the unjust relations of Canadian courts towards Aboriginal people, Peter Kulchyski contends that the Canadian legal system is rooted in capitalist infrastructure that displaces alternative value systems and systematizes the accumulation of power through wealth. This capitalist infrastructure becomes *the* legally sanctified cultural order. His scholarship confirms that the Canadian legal system is not only ill equipped to mediate alternative value systems, but that it methodically excludes said alternative frameworks in order to maintain a "totalizing" authority. About the Canadian legal system he writes:

Justice colludes with totalizing power. Aboriginal rights themselves have been oriented as another tool of totalization . . . Totalization: the process by which objects, people, spaces, times, ways of thinking, and ways of seeing are ordered in accordance with a set of principles conducive to the accumulation of capital and the logic of the commodity form. Wealth piles up; every social product including people is made to be bought and sold, to have an exchange value and a use value; these principles spread as the dominant way of being in the world today.¹⁵

Through this lens, Aboriginal identities are ascribed value only when they enter the capitalist infrastructure as products. Kulchyski suggests that the project to acknowledge Aboriginal rights must navigate this imposed structure predesigned to evade just such recognition. Nadimi's mechanization of the system affirms the totalizing authority of capital, while Belmore and her actions bespeak alternative values, and alternative ways of thinking and knowing. Belmore, through her art, negotiates the art world with an Anishinabe sensibility and an awareness of a particular political history. Such negotiations of multiple systems cannot be quantified only in terms of a monetary system of measurement.

While Kulchyski writes in terms of broader legal and theoretical frameworks, the Nadimi suit conforms to more particular and overt methods of control. Civil suits, in recent decades,

¹⁴ "Nadimi is seeking \$750,000 for wrongful termination as well as unspecified damages for wrongful interference, and unspecified punitive damages for 'egregiously high-handed conduct,' according to the statement of claim... 'The Art Gallery's efforts to promote Belmore were highly successful. In 2005, Belmore was named as Canada's official representative at the 2005 Venice Biennale, one of the pre-eminent international art exhibitions in the world. This achievement represented a tremendous accomplishment for both Belmore as an artist and the Art Gallery as a successful promoter.' The statement alleges that Belmore stopped a sale of her work Megaphone to the National Gallery shortly before the work, valued at about \$100,000, according to Nadimi, was to be shipped. This was 'embarrassing to the Art Gallery, damaging to Nadimi's professional reputation and caused her significant mental distress,' her statement of claim reads." Lederman, "The story behind Belmore's 'I Quit' performance."

¹⁵ Kulchyski, "Theses on Aboriginal Rights," 1.

have become a corporate strategy to control and contain dissenting opponents, who through legal action, become defendants. In the 1980s, two American legal scholars, George Prigg and Penelope Canan, noted a new trend in civil suits. This litigation was commenced by corporations, and targets individuals and organizations whose campaigns, protests, or demonstrations were "perceived to threaten the filers' economic interests."¹⁶ The scholars also observed that merits for these cases were notoriously dubious, their grievances were against lawful, public participation of the defendants, and that the plaintiffs aimed to move the public conception of their case from "political" to "legal."¹⁷ Such cases, although difficult to uphold in court, were rarely lost because individual defendants with few resources were usually forced to cease their activities opposing the claimants' interests in order to have the civil action cease.¹⁸ Prigg and Canan coined a term for this phenomenon: SLAPP, or Strategic Litigation Against Public Participation.

This litigation was employed strategically to intimidate individuals or groups who disagreed with particular corporate values.¹⁹ The litigation became particularly popular in the United Kingdom and Canada, whose legal systems offered significant leverage for filers.²⁰ While in the United States, the legal system equally upholds the rights of individuals and those of corporations, the Canadian system (influenced by the British system) favors governance over individual expression. This places Canadian SLAPP defendants, and Belmore, at an additional disadvantage.

Nadimi's civil suit against Belmore fits this model of corporate interest. My research suggests that Nadimi's legal action against Belmore was of dubious merit, and her grievances were against Belmore's lawful actions and expectations.²¹ Moreover, her total dismissal of public inquiry suggests that Nadimi recognized the power of the law to supersede any social or cultural conditions besides commerce. Nadimi clearly perceived Belmore's efforts to leave her gallery as jeopardizing an economic investment.²² Nadimi claimed that Belmore violated a contract, yet no such written contract exists, and furthermore, Nadimi would be in violation of any such contract should she fail to properly pay Belmore for works sold.²³ She also claimed defamation of character, however, in no public statement does Belmore defame Nadimi.²⁴ Rather, it appears that Belmore's original actions to regain control over her

¹⁶ Douglas Vick and Kevin Campbell, "Public Protests, Private Lawsuits, and the Market: The Investor Response to the McLibel Case," *Journal of Law and Society* 28, no. 2 (June 2001): 204.

¹⁷ Chris Tollefson, "Legal Intimidation by Fiona Donson," *Journal of Law and Society* 27, no. 2 (December 2001): 633.

¹⁸ Vick and Campbell, "Public Protests, Private Lawsuits, and the Market," 205.

¹⁹ Fiona Donson, author of "Legal Intimidation", notes that Canadian and British legal scholars have reframed SLAPP legislation more broadly as "a useful shorthand for intimidatory legislation." Tollefson, "Legal Intimidation by Fiona Donson," 634.

²⁰ *Ibid.*, 634.

²¹ It is the author's own opinion that the suit was of dubious merit, predicated on the understanding that with only a verbal contract, an artist retains legal ownership of their products.

²² Lederman, "The story behind the 'I Quit' performance."

²³ McIntyre, "Rebecca Belmore, Priceless Stories."

²⁴ Lederman, "B.C. artist takes her legal woes to the level of performance art"; Stephen Thomson, "Artist Rebecca Belmore faces legal battle with Toronto's Pari Nadimi Gallery," *The Straight*, September 22, 2010, accessed February 18, 2013, <http://www.straight.com/arts/artist-rebecca-belmore-faces-legal-battle-torontos-pari-nadimi-gallery>

artworks and subsequent public support for Belmore have tarnished Nadimi's reputation. Since the settlement, Belmore has remarked that she cannot speak openly about its conclusion; she is now unable to continue the public defense of herself and her works.²⁵

A Global Defense

Over the past thirty years a global collaboration of Indigenous activists have written the Declaration on the Rights of Indigenous Peoples, and have worked for its global recognition.²⁶ The Declaration was accepted by the United Nations in 2007, but only in November 2010, three months after Belmore's performance *WORTH*, was it formally recognized by Canada.²⁷ Most recently, in October 2013, the United Nations sent a delegation to Canada to investigate the Canadian government's relationship to its Aboriginal peoples based on the standards established by the Declaration.

The purpose of the Declaration is to ensure acknowledgement of the unique rights of Indigenous peoples, globally. While Indigenous communities throughout the world vary greatly, they have suffered common, recognizable injustices in the face of colonization. The language of the Declaration has been carefully crafted to directly address the Eurocentric infrastructures that have so often undermined Indigenous value systems at a governmental level.²⁸ Applicable to the Belmore case is the Declaration's recognition of "traditional knowledge." It defines traditional knowledge in relation to "cultural property," which includes any objects operational in economic systems; it links intangible concepts with tangible objects and expressions; and it specifies maintenance, and protection of said knowledge in relation to already recognized "intellectual property."²⁹ It contends that traditional knowledge encompasses:

Music, songs, and dances for entertainment or education, which usually link present performance with past generations and traditions but which also present renditions; graphics, designs, crafts, textiles, paintings and three-dimensional art (i.e., plastic arts) such as sculpture, carvings, models, figures and so on, whether as an economic asset or as cultural heritage . . . It is not static knowledge. Indigenous peoples . . .

²⁵ Thomson, "Long-time Vancouver artist Rebecca Belmore wins Governor General's award."

²⁶ Marie Battiste and James Youngblood Henderson, "United Nations Declaration on the Rights of Indigenous Peoples," in *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon: Purich Publishing, 2000).

²⁷ Marie Battiste, "Canada Endorses the United Nations Declaration on the Rights of Indigenous Peoples," November 12, 2010, accessed December 4, 2012, <http://aerc.usask.ca/whatsnew.html>.

²⁸ See "Existing Legal Régimes and Indigenous Knowledge and Heritage," in Battiste and Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge*, 169-200.

²⁹ Battiste and Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge*; Val Napoleon, "Looking beyond the Law: Questions about Indigenous Peoples' Tangible and Intangible Property," in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, eds. Catherine Bell and Val Napoleon (Vancouver: University of British Columbia Press, 2008), 372-393; Robert Howell and Roch Ripley, "The Interconnection of Intellectual Property and Cultural Property (Traditional Knowledge)," in *Protecting of First Nations Cultural Heritage: Laws, Policy, and Reform*, eds. Catherine Bell and Robert Paterson (Vancouver: University of British Columbia Press, 2009) 223-244.

have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and cultural expressions.³⁰

The purpose of this broad definition is to be inclusive towards growing traditions within Indigenous communities, and to recognize simultaneous engagement of multiple knowledge systems. Through the history of colonization, Indigenous peoples ingeniously adapted alongside imposed cultures to maintain their own societal values. Today, many traditional objects enter the market place and the Declaration asserts that those objects retain equal status as culturally valuable.

Value, in this sense, may be measured economically, but the Declaration affirms that value is an expansive ideology. Aboriginal legal scholar, Brian Noble, considers this difference of value conceptually. He notes a Eurocentric, capitalist system favors the notion of "ownership," particularly of property, or objects. Meanwhile, an Indigenous worldview conceptualizes the relationship of "belonging."³¹ In this knowledge system, value is not placed upon any one object, but upon relationships, which like traditional knowledge, are far less tangible.

The Declaration is not legally binding, yet with its Canadian endorsement, it may be activated within the legal system *sui generis*, or on a case-by-case basis. Still, debates rage as to whether legal protection of traditional knowledge is even possible. Many scholars are wary of employing the very system which traditional knowledge fundamentally evades. Because of the historic commoditization of Indigenous socio-cultural systems, First Nations and international Indigenous activists have debated whether and how to situate Indigenous concepts of knowledge within more broadly accepted frameworks of intellectual property.³² They recognize that their traditional knowledge, which is sometimes embodied in physical objects, may be protected as though intellectual property. Marie Battise and James Youngblood Henderson, two First Nations consultants on the Declaration, write:

. . . the commodification of culture . . . is the real basis for intellectual property. Indigenous knowledge and heritage tend to be seen as existing within the area of material or everyday culture. Since this layer has been largely taken over by the consumption of commodity items, it is in exploitation that Indigenous knowledge becomes "visible" to the non-Indigenous world.³³

Battise and Youngblood Henderson argue that current laws protecting intellectual property are "awkward and inadequate tools for the protection of culture, communication, and technology that fall outside [a European, capitalist] system."³⁴ While this legal system is

³⁰ Howell and Ripley, "The Interconnection of Intellectual Property and Cultural Property (Traditional Knowledge)," 225; UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution adopted by the General Assembly, 2 October 2007, A/RES/61/295, accessed 7 May 2014. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/295&Lang=E

³¹ Brian Noble, "Owning as Belonging/Owning as Property: the Crisis of Power and Respect in First Nations Heritage Transactions with Canada," in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, eds. Catherine Bell and Val Napoleon (Vancouver: University of British Columbia Press, 2008), 465-488.

³² Noble, "Owning as Belonging/Owning as Property," 145-168; Napoleon, "Looking beyond the Law: Questions about Indigenous Peoples' Tangible and Intangible Property,"; Howell and Ripley, "The Interconnection of Intellectual Property and Cultural Property (Traditional Knowledge)," 223-246.

³³ Battise and Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* 244.

³⁴ *Ibid.*, 250.

predicated on capitalist reductionism, Indigenous cosmologies favor complex interpretations that privilege interconnections. The Declaration's expansive definition for cultural property, as connected to intangible types of knowledge, aims to revise how such objects are evaluated.

To consider Belmore and her artworks within the context of traditional knowledge is to diversify Euro-Canadian understandings of the art object, and to affirm the complexities and continuities of how Indigenous knowledge interconnects with other socio-cultural systems. I suggest that Belmore's works directly exemplify notions of cultural property as traditional knowledge; they invoke multiple systems of value, which are only comprehensive when their relationships to Aboriginal peoples are recognized. Furthermore, I suggest that Belmore's performative actions related to the suit illustrate the interconnections of Indigenous knowledge as simultaneous expressions of personhood which link historic and contemporary Indigenous communities socially and politically. To view the Belmore case within the context of the Declaration demonstrates how traditional knowledge may negotiate economic systems while simultaneously retaining alternative value systems. Upholding Belmore's defense as Indigenous knowledge and her work as cultural property infuses a more broadly tractable sense of value into current conceptions of art.

Belmore's Cultural Capital

The strategic employment of several socio-cultural systems allows Belmore's work to be categorized both as art object and cultural property. Her works are sites of activism embedded within dominant cultural structures of the commercial and capitalist oriented art world. Each of the following works related to Belmore's case contributes to her identity as an Anishinabe woman, a national icon, a First Nations activist, and an emissary of traditional knowledge. I consider these works as examples of cultural property embedded within the art system. Often both corporeal and transitory, ephemeral and memorable, historic and contemporary, these works epitomize the interconnectedness of Indigenous knowledge systems.

The 2001 installation and performance *Wild* is representative of how Belmore's larger body of work negotiates colliding histories and ways of knowing. It locates her body partially naked and partially covered in the center of converging identities. Here the nineteenth century Victorian Grange mansion bedroom at Toronto's Art Gallery of Ontario is usurped by subtle symbolism. Belmore hides references to First Nations contributions to Canadian history and heritage under what, at first glance, appears to be an empty, private space. Over the mantle hangs a Realist landscape of colonialism's Manifest Destiny. By the fireplace sits a coalscuttle on a pristine white sheet. Nearby, a floral armchair with Queen Anne legs reeks of Victorian values, and was possibly embroidered by an unacknowledged Anishinabe woman.³⁵ The four-poster bed is adorned with a canopy and settled there, like Goldilocks, is Belmore tucked under the duvet made of satin and human hair. The canopy is made of beaver pelts and embroidery evocative of the trade networks of the Métis and the early commodification of Aboriginal arts. The duvet is covered with locks of black hair, very much like Belmore's own. As a "wild" woman, Belmore cozily makes herself at home among the familiar and the foreign, among the private and the public, and most significantly, among the seemingly quiet but subtly hostile environment.

³⁵ For more on the history of Woodlands women embroidery in the Victorian market, see *Ruth Philips, Trading Identities: the Souvenir in Native North American Art from the Northeast, 1700-1900* (Seattle: University of Washington Press, 1998), 135-7, 215-18.

Wild re-visioning Aboriginal histories into a picture of Canada's colonial past and present. The subtleties of her revisions illustrate the interconnectedness of an Indigenous worldview, or way of knowing. A counterpoint to this sensibility of the connectedness between the social, ceremonial, and legal is the categorizing systematization that is the Canadian government, which separates the social, the ceremonial, and the legal into distinct entities. As Kulchyski notes, the Canadian system is organized to maintain its own authority, often in spite of the ethical authority of those who oppose it.³⁶ This regulatory system relates directly to the history of Aboriginal arts in Canada. Aboriginal Affairs and Northern Development has historically regulated the production and commoditization of Aboriginal art, and then claimed these arts as products of nationhood.³⁷ The relationship between this system and Native artists creates a forced imbroglio. Nation-building systems, including the art world's renowned Venice Biennale, historically and routinely employ Aboriginal peoples as representatives of national culture, mandating the commoditization of personhood. This commodification of Indigenous identity creates what Kulchyski considers a "totalizing" system.

Belmore is acutely aware of the history of the system and its implications for contemporary Aboriginal communities. While through her work she struggles to make the historic and continued injustices against Indigenous peoples visible, because Belmore must employ capitalist structures to gain recognition, she herself risks becoming totalized, and totally obscured by said system.

Just such a metaphor for the system appears in the 2008 work *Fringe*, created three years into litigation. This photographic work, first appearing on a billboard in Montreal, comments on the objectification of Native women and their arts within Canadian culture. Belmore situates the Native figure as obscured and violated. Her position upon a white couch references the long, distinguished Western history of objectification of the body as art.³⁸ The composition distinctly invokes the *odalisque*, the French term coined in the nineteenth century to describe a composition of a white nude woman costumed as an Oriental other. The lash across her back has been stitched with beads that hang like dripping blood. To be present and to represent one's self and culture as a First Nations woman in this Western system is to be obscured, violated and objectified. One photograph from the edition was sold through an art auction organized by the Rebecca Belmore Legal Defense Fund, along with donated works from many artists, to raise money to continue the battle of maintaining control over her works and her identity.³⁹

Belmore asserts that her identity cannot be oversimplified. Through her work she actively combats the impositions of the Canadian government and the expectations of the art world. She is known for her deft negotiation of her Aboriginal, modern, female identities:

³⁶ Kulchyski, "Theses on Aboriginal Rights," 1.

³⁷ Built into the title of this ministry is a bond between capitalist interests and the governing of aboriginal peoples. Martine Reid, "Tenuous Lines of Descent: Indian Art and Craft of the Reservation Period," in *In the Shadow of the Sun: Perspectives on Contemporary Native Art*, ed. Gerald McMasters (Hull, Quebec: Canadian Museum of Civilization, 1993), 154-169; John Milloy, "Indian Act Colonialism: A Century of Dishonour, 1869-1969," National Centre for First Nations Governance, 2008, accessed May 7, 2014. http://fngovernance.org/ncfng_research/milloy.pdf

³⁸ Lynda Nead and Marcia Pointon, *The Female Nude: Art, Obscenity and Sexuality* (New York: Routledge, 1992).

³⁹ "Belmore supporters auction art in her defense," CBC News, February 28, 2011, accessed October 4, 2013. www.cbc.ca/news/arts/belmore-supporters-auction-art-in-her-defence-1.1085085; Sandals, "Legal action sparks art auction."



Figure 2
 Rebecca Belmore, *Fringe*, 2008. Billboard, at
 the Dundas Street West Community Visual Arts Centre.

I've been described as making political performance pieces. That's a way of speaking about it. I had no choice. It was a way for me to have control and create an autonomous space for myself. I think performance is the strength of my work, because it most likely comes from somehow knowing, without knowing, that what I was being taught from a very young age was negotiable. I think this process of negotiating space and occupying it shows up in other work that I make.⁴⁰

The historic and continued compromises of Aboriginal communities in the face of Euro-Canadian systems are ever present in Belmore's works. In 2005, the inaugural year of her dispute with Nadimi, Belmore represented the Canadian Pavilion at the most internationally celebrated art event in the center of colonizing territory: the Venice Biennale. Only the second First Nations artist to show at the Venice Biennale, Belmore was the first to directly represent the Canadian nation. She chose to work in her most powerful medium: performance. While certainly considered contemporary art, performance deftly eschews precise categorization. As something ephemeral, it has no root objecthood, and cannot be directly commoditized.

⁴⁰ Rebecca Belmore, interview by Scott Watson, *Rebecca Belmore: Fountain* (Vancouver: Morris and Helen Belkin Art Gallery, 2005), 24.



For *Fountain*, Belmore created a video installation recorded in the industrial bay waters of Vancouver, which, in Venice, was projected onto a screen of falling water.⁴¹ The scene opens on a flaming pyre before a calm, gray sea. It cuts to the artist submerged in the sea, no longer quiet, but violently agitated by her struggle with a simple tin pail. The pail and the ocean struggle to drown the Native, the artist, the woman. But she labors against the seemingly consuming ocean and emerges hauling the pail. She struggles barefoot over the tundra-like landscape and arrives before the camera to hurl the contents of the bucket upon the viewer; it is not water but blood, which drips a red sheen over Belmore's now still, staring visage. The medium is modern, the means—fire, water, and blood—are eternal, and the ambiguity of the audience implicates all viewers: Canadian, European, male, female, Indigenous, and settler.

The curatorial catalogue does not explain the meaning of the piece. The writers are careful to allow the piece to speak for itself. Still, they openly acknowledge Belmore as a First Nations activist who represents contentious issues for Canadian society. In curator Scott Watson's interview he asked how Belmore's performances related to her activism, to which she replied, ". . . it has to do with a particular history, a particular political history of *being born into a political situation*..." Belmore's works, as with all Aboriginal artworks, are necessarily political because they are embroiled with a particular political history. *Fountain* asserts a political history through contextuality. It can only be understood in relation to the geographies of the performance, and the governmental terms under which the artist was commissioned. Even while presenting on behalf of the nation that dictates the relative autonomy of First Nations people, Belmore labored to claim a place for herself and for all Indigenous artists.

For Nadimi, performance, action, prestige, and political statement could be distilled into monetary measurements. In the statement of claim, Nadimi wrote, "In 2005, Belmore

⁴¹ Rebecca Belmore. "Fountain. Canadian Pavilion, Venice. 2005," accessed October 6, 2012, <http://www.rebeccabelmore.com/exhibit/Fountain.html>

was named as Canada's official representative at the 2005 Venice Biennale, one of the pre-eminent international art exhibitions in the world. This achievement represented a tremendous accomplishment for both Belmore as an artist and the Art Gallery as a successful promoter.⁴² Through the claims of the suit Belmore had become Kulchyski's social product. Her political performance became a blood-diamond: simultaneously representative of tyranny over Aboriginal peoples, while ready equally for consumption.

What is immediately evident in this work, and in all of Belmore's pieces, is a communication of complex social meaning, or value. *Wild, Fringe, Fountain*, and *WORTH* are simultaneous expressions, contestations, invocations, and acts. They refer to contemporary and historic socio-cultural worldviews. They speak to the art world, but they address all cultures and humans. Finally, they are the embodiments of ideas that cannot be completely bound to objects. They serve to relate shared experiences. While, as objects, these pieces have entered the market, they insist upon multiplicities of value that exceed mere dollars worth. These works express an alternative, or expansive socio-cultural system that can be conceptualized as Indigenous knowledge. They cannot be reduced to only a commercial value.

Speaking Out, Speaking Back

The piece at the center of the lawsuit is the most remarkable because it most decidedly identifies Belmore's condition as a communicator of traditional knowledge. When the dispute arose, Nadimi was in the process of negotiating the sale of an object to the National Gallery of Canada, *Ayum-ee-aawach Oomama-mowan: Speaking to Their Mother*.⁴³ For Belmore, and all Aboriginal peoples, this work represents more than an art object. It is a communicator of traditional knowledge and therefore a piece of cultural property. Both an object and an act, this work employs a monumental wooden megaphone to speak out and speak back. It was first created to address the Oka Crisis in Mohawk territory.⁴⁴ Belmore's intention with this work was to bypass the need for cultural translation. It was a work for First Nations to directly address themselves to their lands, their sources of power, authority, and knowledge.⁴⁵

The original performance was held in Banff in 1991, where thirteen First Nations speakers gathered to address the earth. These individuals spoke to the land and spoke back to the world. Chief Bernard Ominayak stepped before the megaphone first. He entreated that all present should join in the political struggle of First Nations to prevent the expropriation and destruction of their lands. Belmore's own performance has lived on in the memories of her audience, and as with the body of her performative works, has been retold and relived like the historic oral narratives of her home community. Cherokee artist and curator, Lara Evans, asserts that Belmore's speech at that first performance, with its pattern, rhythm, and words, as performed before elders, was a form of prayer. She has felt hesitant to write about the work because of its evident power.⁴⁶ During *Ayum-ee-aawach Oomam-mowana's* first

⁴² Lederman, "The story behind the 'I Quit' performance."

⁴³ Ibid.

⁴⁴ Harry Swain, *Oka: A Political Crisis and its Legacy* (Vancouver: Douglas and McIntyre, 2010).

⁴⁵ Diana Nemiroff, Robert Houle, and Charlotte Townsend-Gault, *Land Spirit Power: First Nations at the National Gallery of Canada* (Ottawa: National Gallery of Canada, 1992), 118.

⁴⁶ Lara Evans, "Megaphone? What megaphone?" *Not Artomatic*, September 22, 2010, accessed October 6, 2012. <http://travelpapod.wordpress.com/2010/09/>.

speaking-out, a nearby hiker slipped from a trail and fell to his death. Belmore has never publicly spoken of the event. Evans suggests this loss of life transformed the performance into a ceremony. Although wary, she notes: "what happened to that performance makes an important point about the ethics of Native and First Nations performance art practices. Performances have power."⁴⁷ In many Indigenous value systems, certain actions have deep cosmic power that cannot be explained. These actions, when part of ritual and ceremony, are forms of traditional knowledge as defined in the Declaration of the Rights of Indigenous Peoples. Regardless of there being no evident correlation between the death and *Ayum-ee-aawach Oomam-mowana*, Belmore was deeply affected by this first performance, and questioned for a time if the work should be used. During that time it sat silently on exhibition in the halls of the National Gallery, a mute object, speaking only in the art terms valued by the museum: decontextualized, secularized, representing singular authorship and authenticity.

However, in 1996, *Ayum-ee-aawach Oomam-mowana* was needed within its community once more. The Assembly of First Nations, the elected representative voice for all First Nations in Canada, was excluded from parliament's First Minister's Conference. Belmore offered her megaphone to the Assembly. On the lawns of Canadian Parliament, within view of the National Gallery, Assembly leaders used Belmore's work to speak in protest: to make their voices heard. Chief Ovide Mercredi, then leader of the Nations, called out the historic malignment of First Nations voices, governmental attempts to silence First Nations peoples, and the egregious injustice of this enforced silencing. The megaphone then became the voice of all First Nations seeking representation and equality within the Canadian nation.

The megaphone has since traveled around the country to allow Aboriginal peoples to speak amongst themselves and their lands. It is much more than an art object. Within the Canadian legal system, which represents the interests of the gallery system, it has been a political tool employed to demand recognition and to assert authority. First Nations are often in need of a louder voice and the megaphone is the kind of object that contains so much power that its use can threaten the hegemony. And still, from its first use, it has also been a traditional ceremony. Its performances link generations, from youth to elders, to their lands. It is ritual. It is prayer. As such an object, it is assured international protection as a conveyer of traditional knowledge.

Indeed, it would be antithetical for a Canadian institution such as the National Gallery to obtain the megaphone as its property. Governmental ownership and exhibition of such an object threatens to control, to displace, and to mute the megaphone. To return this work to the halls of the National Gallery against the will of its maker would be an act of recolonization towards Aboriginal peoples. In order for *Ayum-ee-aawach Oomam-mowana* to remain accessible to Aboriginal communities, it should be distinguished as cultural property, capable of conveying meaning as more than an aestheticized, commoditized object. Belmore prevented this work from being acquired by the most powerful art institution in Canada. Her action bespeaks her interest in the object as something beyond its monetary value; it suggests her valuation of the object, as related to its cultural and political contexts, as priceless.⁴⁸

⁴⁷ Evans, "Megaphone? What megaphone?"

⁴⁸ In 2007 *Ayum-ee-aawach Oomama-mowan: Speaking to Their Mother* was purchased by Walter Phillips Gallery with the support of the York Wilson Endowment Award and in 2008 Belmore returned to Banff to recreate its first performance.



Figure 4

Rebecca Belmore, *WORTH (A Statement of Defiance)*, 2010. Performance stills. Courtesy of Harold Stegmann.

Defense of Art as Culture

In September of 2010, as Belmore faced a fresh onslaught of litigation, she took action. Frustrated and finally exhausted from fighting she returned to her performative voice to call out to the art world through *WORTH*.⁴⁹ Footage of the piece shows Belmore in front of the entrance to the Vancouver Art Gallery, historically a courthouse, dragging a garbage can and mounting a hand painted sign. Evocative of several of her other works, she takes water and rag from the very pail she used in *Fountain* to meticulously scrub the sidewalk before arranging three parcels. She unwraps them to the beat of a drum (from a boombox leaning against a nearby tree) revealing pieces of embroidery and beaver pelt from her Grange installation about colonization, *Wild*. She carefully lays them out and then lies upon the hair blanket, as though crucified. After minutes of stillness she bolts upright, rewraps her coverlet, pelts, and embroidery and presents them to the chief curator of the Vancouver Art Gallery. As the video capturing this performance follows the retreat of the curator, Belmore walks off screen and cries out in frustration, "I quit."

While the media coverage of the dispute between Nadimi and Belmore centered on objects and commerce, it was Belmore herself who risked being objectified. To attempt to claim ownership and authority over her work would be to recolonize the personhood of a First Nations woman.⁵⁰ The sign, "I am worth more than one million dollars to my people," solidifies the personification of monetary value of the suit as an art object. Belmore has reiterated:

Even though I've had all this critical success, it doesn't necessarily boil down into dollars... As an artist, I'm not obsessed with making a lot of money. I'm more obsessed with being a good artist and trying to contribute to culture. I'm not out to make a million dollars. 'Cause I'm worth much more than that—as the sign says.⁵¹

In *WORTH* Belmore demonstrates, while her works may live within the art system, and she can be martyred, she cannot be claimed and her works cannot be owned. Her *Wild* work can be gifted, just as its display was, at the Art Gallery of Ontario, offered as a gift of knowledge—Indigenous epistemological knowledge about relationships.

In 2011 the sign from *WORTH* was repurposed as a billboard. Belmore did not make this work herself. Rather, fellow artists asked to have the hand painted sign. Jamelie Hassan and Ron Benner, in conjunction with the London Live Arts Festival, blew it up and placed it along the nearby freeway to Toronto as a beacon to the public about Belmore's legal predicament. Larger than life, the sign is symbolic for Belmore herself and her contributions as artist and activist on behalf of First Nations in Canada. The billboard proclaims: *I am worth more than one million dollars to my people*.

⁴⁹ Rebecca Belmore "Rebecca Belmore WORTH Sept. 12 2012." Youtube. September 12, 2010, accessed October 6, 2012. <http://www.youtube.com/watch?v=Cv9DFVAzok4>.

⁵⁰ Mike Blanchfield, "Canada Says No To UN Call For Review Of Violence On Aboriginal Women," in *Huffington Post Canada*. September 19, 2013, accessed October 1, 2013. http://www.huffingtonpost.ca/2013/09/19/canada-un-aboriginal-women_n_3952425.html.

⁵¹ Lederman, "The story behind the 'I Quit' performance."

Conclusion

In the civil suit between one art dealer and one artist Pari Nadimi positioned herself as a corporate body, and mechanized the legal system as a tool for intimidation of an individual. With the “resolution” of the suit, Belmore has been effectively silenced, and her position as social product with regards to the law has been cemented. The dominant system is not organized to acknowledge people; it recognizes commerce, markets and ownership through value exchange. Yet, this case is not simply a personal dispute; Belmore is not the only person affected by its outcome. Many Canadian artists have expressed fears about the implications of their relationships with the commercial arm of the art world. During the suit the media speculated about the potential infringements of Belmore’s right to property.⁵² This perspective remains myopic. It is not the majority of artists who have a historic relationship of regulation within the Canadian legal system. It is Aboriginal peoples who are most directly affected by the adjudication.

The Canadian system of governance has routinely and systematically usurped Indigenous personhood while paternalistically claiming authority over particular Aboriginal rights.⁵³ Such a history makes it impossible to separate the Belmore case from the larger governmental systems that regulate Aboriginal peoples in Canada. It is also this history that explains Belmore’s unique reaction to the suit. It is through these systems that Indigenous peoples have been the continual *objects* of federal persecution. The government historically disenfranchised Aboriginal peoples, excluded them from equal citizenship, relegated them to certain communities and geographies, and prohibited their languages and religious practices, all the while claiming First Nations cultural objects as signifiers of Canada as a nation.⁵⁴

These governmental systems, based on European social, philosophical, and scientific concepts of reductionism, establish discreet categories for understanding.⁵⁵ The Canadian legal system, predicated on such reductionism is prone to discreet categorization. In the legal case, Belmore’s artworks became mere objects with ascribed commercial value. Indigenous knowledge systems alternatively emphasize the importance of relationships, as does Belmore through her artworks and through her public defense. Belmore’s actions and artworks negotiate multiple cultural systems and modes of perception. Her system of

⁵² Only one Native writer considered the potential recolonizing of First Nations art production: Evans, in “Megaphone? What megaphone?”

⁵³ For information on recent United Nations interventions see: Jessica Hume, “UN to investigate Canada’s treatment of Aboriginal Peoples,” *Toronto Sun*, August 10, 2013, accessed 16 September 2013. <http://www.torontosun.com/2013/08/10/un-to-investigate-canadas-treatment-of-aboriginal-peoples>; The Canadian Press, “UN human rights investigator says Canada needs inquiry into missing aboriginal women,” *The Globe and Mail*, October 15, 2013, accessed May 6, 2014. <http://www.theglobeandmail.com/news/politics/un-human-rights-investigator-says-canada-needs-inquiry-into-missing-aboriginal-women/article14870214/>; The Canadian Press, “Northern Gateway: First Nations Ask UN To Investigate B.C. Government’s Actions,” *Huffington Post*, September 13, 2013, accessed May 6, 2014. http://www.huffingtonpost.ca/2013/09/30/northern-gateway-first-nations-un_n_4016368.html.

⁵⁴ For some history of First Nations iconography as nationhood see Michael Dorland, “A Thoroughly Hidden Country: Ressentiment, Canadian Nationalism, Canadian Culture,” in *Sightlines: Reading Contemporary Canadian Art*, eds. Jessica Bradley, Lesley Johnstone (Artex Information Centre, 1994); Daniel Francis, *National Dreams: Myth, Memory, and Canadian History* (Vancouver: Arsenal Pulp Press, 1997); Nelson Graburn, “The Fourth World and Fourth World Art,” in *In the Shadow of the Sun: Perspectives on Contemporary Native Art* (Ottawa: Canadian Museum of Civilization, 1993), 1-26.

⁵⁵ On reductionism and the legal system see John Millary, “Indian Act Colonialism: A Century of Dishonour, 1869-1969,” Research paper, National Centre for First Nations Governance, 2008; Kulchyski, “Theses on Aboriginal Rights.”

defense expands beyond the boundaries of the courtroom into the very society she seeks to address. To revalue Belmore's works as Indigenous knowledge affirms a more malleable, less consumerist-driven concept that conforms to more complex social value systems. This case illustrates the need for such recognition of art objects within the Canadian legal system.



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