

The April 12, 2013, Sale of Hopi Masks by Auctioneers Néret-Minet Tessier & Sarrou at Hotel Droûot:

Sacrilege? A Criminal Act? Or Simply the Fair and Straightforward Application of French Law?

By Yves-Bernard Debie



FIG. 1 (above): Helmet mask of Kâna-Kwe Mosona. Zuni, New Mexico. C. 1890.

© Antoine Mercié/Dan Graphiste.

FIG. 2 (lower right): *The Masked Kachinas (Hopi Indian "Rain-Makers"), Village of Shonghopavi, Arizona. 1908.*

Stereo card by Works and Studios, Arlington and Westwood, NJ. Published by Underwood and Underwood.

Robert N. Dennis Collection of Stereoscopic Views, New York Public Library, image ID 649744.

FIG. 3 (center right): *Ceremony, Soyoko Group Adobe House Cluster, Spectators on Terraces. By James Mooney, Walpi Pueblo, First Mesa, Arizona, February 1893.*

Gelatin glass negative. 20.3 x 25.4 cm. National Anthropological Archives, Smithsonian Institution, BAE GN 01824c 06312900.

It was wafting through Paris in spring of 2013 like the curious scent of a sort of religious fundamentalism.

Skillfully manipulated by the media, the sale of seventy Hopi Kachina masks scheduled for April 12, 2013, at the Hotel Droûot gave rise to a debate that, in the absence of any legal basis supporting its opponents, was focused on notions such as morality, religion, the sacred, respect for beliefs, and even sacrilege.

The position of those who advocated suspending—and why not prohibiting?—this sacrilegious sale is effectively summarized by the letter of support it received from American actor Robert Redford, addressed to the Survival International France association: “To auction these would be, in my opinion, a sacrilege—a criminal gesture that contains grave moral repercussions,” and “I would hope that these sacred items can be returned to the Hopi tribe where they belong. They are not for auction.”

On the basis of such moral arguments rather than on any legal ones, Survival International France (an organization for the defense of indigenous peoples that has enjoyed Redford’s support) as well as the American State Department; United States Ambassador to France Charles Rivkin; and two American museums, the Museum of Northern Arizona and the Heard Museum, appealed to the Tribunal de Grande Instance district court in Paris to suspend the auction.

The argument submitted to the judge was simple: The 18,000-member-strong Hopi tribe, most of whom live in Arizona, still actively practice their tra-

ditional religious rites and do not consider the masks in question to be “simple” works of tribal art or mere expressions of their culture. Rather, they see them as living beings in which the Kachina spirits, who participate in their sacred ceremonies, are incarnated. According to them, the masks are not only sacred objects used in the practice of their religion but members of the tribe as well. The tribe’s masks are and only can be collectively owned, and thus by their very nature are inalienable, a fact that the Hopi tribe’s 1936 constitution affirms.



Seen from the point of view of the sacred and the idea of sacrilege when the sacred is defiled, or further from the perspective of the inalienability of the human body (and incarnated spirits, in this case), Survival International's petition might appear irrefutable. According to this thesis, the sale of living beings or of spirits incarnated in sacred cult objects should not be authorized.

A cursory and simplistic examination of French law, which protects and respects religions and beliefs and also prohibits the commercial use of human bodies, might seem to support the Hopi contention at first

FIG. 4 (right): Indian (Native American) Participation—Hopi dancers with animal masks and schoolchildren.

© New York World's Fair 1939–1940 records, Manuscripts and Archives Division, The New York Public Library, Astor, Lenox and Tilden Foundations, image ID 1675751.



Indiens Hopi de l'Arizona. Cérémonie Natacka.

Cl. Bureau of American Ethnology.



glance. The first article of the French law of separation of church and state of 1905, a key component of French secularism, states that “the Republic guarantees the freedom of conscience” and “guarantees the free exercise of religions” These guarantees are solemnly reaffirmed in the French Constitution of 1958, which, in its first article, specifies that France “respects all beliefs.”

Again, consideration of these arguments could be taken to imply that the sale of living beings, and of spirits incarnated in sacred religious objects, would be unauthorized.

And yet—and, in my opinion, quite correctly—in her order of April 12, 2013, the judge presiding over the Tribunal de Grande Instance district court refused to suspend the controversial auction, which then took place as planned at 2:30 p.m. that day.

The judge's skillfully crafted opinion took pains not to disparage the Hopi tribe's religious beliefs, admitting that:

The masks in question do, for the Hopi people and those who practice the traditional religion associated with them, have sacred value and are of a religious nature insofar as they incarnate their ancestors.

However, she continued:

... they cannot be associated with human bodies or considered as parts of human bodies of persons who exist now or in the past, which would be protected by general principles of law as stated by article 16-1 of the civil code. The fact alone that these objects can be identified as religious objects, as symbols of a faith, or as sacred or divine representations is not sufficient for us to consider them as being of an untransferable nature or of there being anything manifestly illicit or harmful

about their being sold, which would allow the judge presiding over the Tribunal de Grande Instance to act in accordance with the powers it is given by article 809, paragraph 1.”

The judge also asserted that neither the American Indian Religious Freedom Act of August 11, 1978, nor the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on September 13, 2007, could be the basis for a judgment in her court. No violation of French law or of principles generally admitted in French law laid the foundation for the petition to suspend the auction.

The principle this judgment relies on is evident: The alleged illegality of a sale must be established to be a violation of a rule of positive law. That is a minimum prerequisite in any situation where the rule of law applies.

Moreover, as far as I am concerned, recourse to notions of morality every time the law does not satisfy a restitution demand by a group that claims exclusive ownership rights, or a demand to prohibit the sale of antiquities or tribal art objects that may be considered sacred or inalienable in their country or place of origin, is inappropriate.

In an earlier article on France’s restitution of Maori heads to New Zealand, I expressed concern that a Pandora’s box had been opened with the passage of the law enacted by the French National Assembly by an enormous majority on May 18, 2010, with complete disregard for the principle of the inalienability of

public property and the property in French museum collections, which, according to the French Senate representative, “... touched on ethical and moral questions relating to human dignity and to the respect due the cultures and beliefs of other people.”

Morality, be it secular or religious, is in a state of constant evolution. What was “sacrilege” yesterday no longer necessarily is today, and no one can pretend to know what it will be tomorrow. There is obviously no such thing as an objective notion of sacrilege.

In the case before Paris’ Tribunal de Grande Instance court, the recognition of objects made sacred by a religion as inalienable, as respectable and attractive as it may seem, would clearly lead to impossible situations. Who would be able to judge the sacredness of things and how could judges enforce such rules? Will we prohibit the sale of bibles, of torahs, of rosaries, of sacred water, or of a fifteenth-century Flemish triptych depicting the Annunciation? Would all belief systems protected by the French Constitution of 1958 have the right of recourse to this idea of the sacred? Will we, in order to avoid slipping into sectarianism, be forced to reinstate state religions, which alone would have this privilege? Will we also have to empty our museums, in which sacred objects are viewed by the profane? And in the event a “sacrilege,” or “crime,” was committed, what punishment would be imposed on the guilty?

Moreover, would it be enough that an object be “invested” with a belief, or a ritual or philosophical

FIG. 5 (below): Indian war dance, chanters, and drum beaters performing at war dance ceremony at Taos Pueblo. Bluford W. Muir, August 1960.

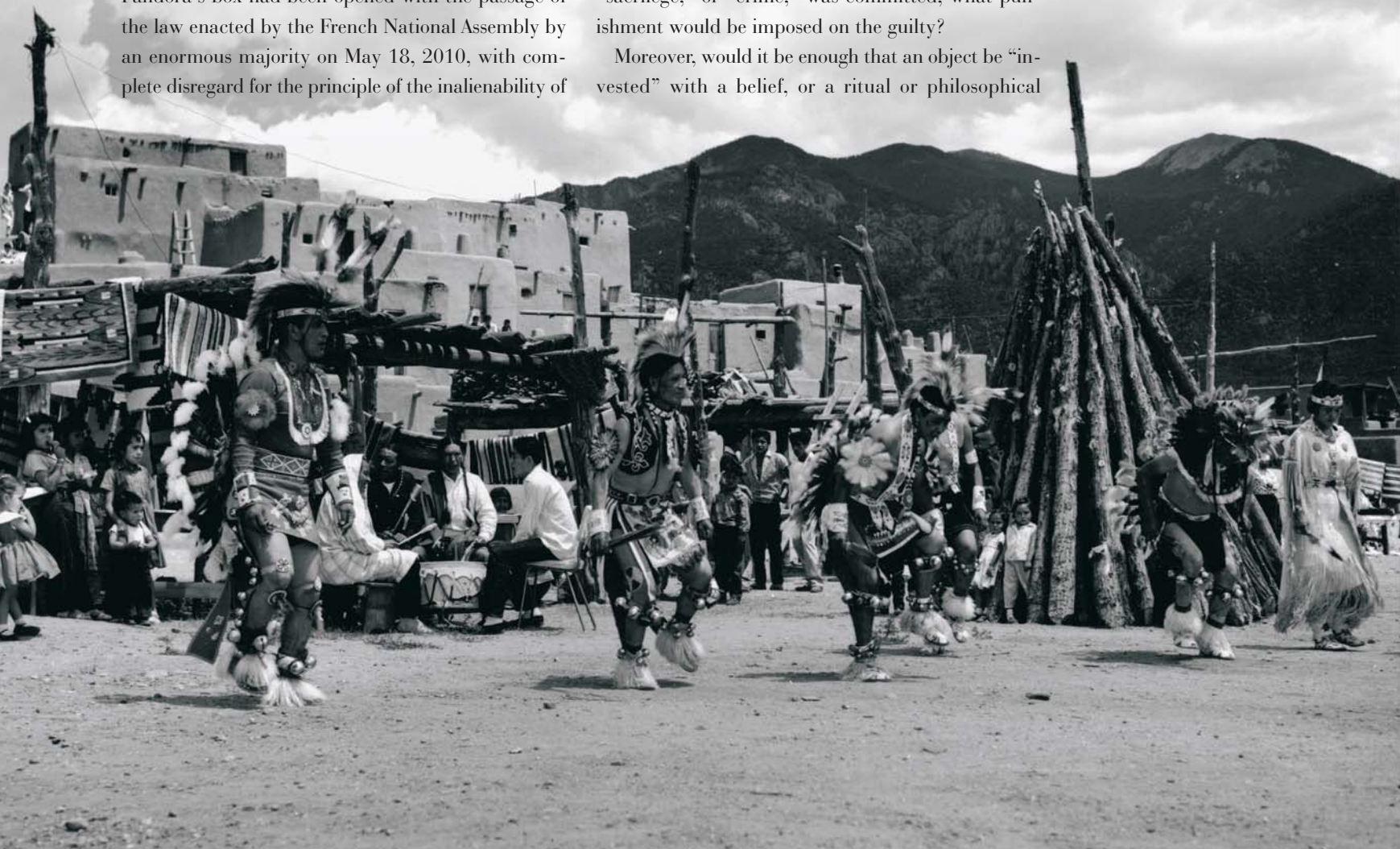
© U.S. Forest Service, photo number: 497530.

FIG. 6 (right): A collection of Katsinas as seen at the Heard Museum, which deals with the diverse Native American cultures found throughout Arizona.

From the Flickr photostream of InSapphoWeTrust, 2009.

FIG. 7 (lower right): Color plate with seven Kachinas.

From Jesse Walter Fewkes, *Dolls of the Tusayan Indians*, E. J. Brill, Leiden, Netherlands, 1894, plate 11.





meaning, or simply be imbued with a poetic or artistic soul for it to acquire the status of being illicit for commercial purposes? Viewed this way, one begins to realize where all this could lead—who could say that one was wrong to see the manuscript of a poem like Rimbaud's *Sleeper of the Vale* as a sacred object?

Ultimately, prohibiting the sale of sacred objects would be tantamount to prohibiting the sale of nearly all tribal art objects, the overwhelming majority of which are invested with a spiritual dimension.

Above and beyond the fact that it represents a correct application of law, the April 12, 2013, decision reminds us, quite aptly in my opinion, of a principle that cannot be challenged: France “respects all beliefs,” but those beliefs are not the source of law.

