"No French legislation exists that prohibits the sale of objects from the Hopi tribe."

By Yves-Bernard Debie

On December 6, 2013, Claire David, the chief presiding justice of the French Superior Court in Paris once again rendered judgment on a petition jointly filed by the Hopi tribe and Survival International France to prevent the sale of Hopi *katsinam* masks. The petitioners hoped to have twenty-two lots withdrawn from sales held on December 9 and 11, 2013. This follows their petition of May of 2013, a case that was in every respect similar, in which they had failed in their efforts to have seventy *katsinam* masks withdrawn from a sale at the Hôtel Drouot (see *Tribal Art* magazine, autumn 2013).

The same protagonists, the same case, the same arguments, and the same result: The sale was allowed. Whether Paul Valéry likes it or not, the same causes do produce the same effects.

In this context, Survival, and even more so the Hopi tribe, which is not itself a judicial entity and therefore does not have the capacity to make legal judgments, must certainly have realized that their petition was bound to fail.

It therefore came as no surprise that the judge, following reasoning we believe justified, declared the Hopi tribe was not qualified to act, and that she rejected Survival's demands, citing certain elementary legal principles according to which "no French legislation exists that prohibits the sale of objects from the Hopi tribe," "the sale of cult objects is not prohibited in France," and "the owner of property [the litigated masks in this case] is presumed to be acting in good faith unless shown otherwise."

Incapable of submitting any proof that they had any title to the masks whose sale they wished to halt, or that the masks had any UNESCO convention status, and without any evidence of origin or of illegal export, the Hopi tribe and Survival chose once again to found their position on the premise that the sale of these objects was of a "shocking and blasphemous" character. Moreover, the judge ruled that "it had not been established that American law prohibited the sale of American Indian objects when they were private property" or that the objects in question could be considered inalienable "family memorabilia" or "grave objects."

The arguments the petitioners put forth failed to convince the French judge, who deemed that "such moral and philosophical considerations alone could not allow a judge to intercede in the sale of these masks, which was not prohibited in France."

The Superior Court once again upheld the proprietary rights of collectors against the demands of groups who, in the name of religious and moral principles, would like to see the institution of an absolute right to restitution and forbid any and all possession, exhibition, or sale of artworks or cultural property, which they consider themselves to have a superior legal and legitimate title to.

The rigor of the judge's reasoning is understadable and can be approved of, but one question remains: Why did the Hopi tribe and Survival take this to court a second time, knowing full well in advance, after having lost once, that they would not prevail? The answer undoubtedly is that they were looking for more of the media coverage that their earlier action received. And indeed, just like in May, the newspapers nearly all followed it closely and called the auction a "blasphemous sale," a "criminal act," and an "intolerable obscenity." The media circus is the benefit the Hopi tribe and Survival wished for and was what they knew they could count on.

And yet, even in the realm of religious morality, where sacred and blasphemous are opposed, the Hopi crusade cannot in our estimation be considered viable. The notions of the sacred and the blasphemous are so vast, subjective, and changeable that a legal statute cannot easily integrate them—and certainly not without setting extremely dangerous precedents. In this perfect world that the Hopi, Survival, and all of their defenders wish for, who will be the ones to decide whether or not a given object is sacred, and who will have the power to impose decisions on the subject upon the judges of the land? Will a new Doctrine of the Two Swords that again declares the sacred to be superior to the temporal need to be instituted, and will the law be made subservient to its principles? An affirmative reply to this question that could be reconciled with a just state of law is impossible.

On the other hand, the right to property that the Hopi tribe and Survival sought to bring into question in the name of religious and moral principles they present as superior is a fundamental human right, not to mention a "sacred" one. Article 2 of France's Declaration of the Rights of Man and of the Citizen describes the right to own property as one of the "natural and imprescriptible rights of man." The right to property is further protected by Article I of the European Union's Convention for the Protection of Human Rights and Fundamental Freedoms and by the Fifth Amendment of the Constitution of the United States.

With her ruling of December 6, 2013, Judge David resisted the siren song of the do-gooders and the proselytizers. She upheld the law and rendered a decision based upon it.

Epilogue

On the day after the contested sale on December 9, the Los Angeles-based Annenberg Foundation announced it had acquired twenty-one Hopi masks and three San Carlos Apache masks at the auction with the intention of giving them to these American Indian tribes. In the final analysis, the auction that had been so bitterly decried wound up being an opportunity for the "original" tribes to acquire the masks thanks to the support of a foundation. From now on, would not the money, resources, and energy spent on vain court actions that have no legal basis be better used for finding and then acquiring objects deemed sacred?