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THE *LAST TANGO IN PARIS* CASE

Ultimo tango a Parigi (*Last Tango in Paris*) was the protagonist of a highly discussed and intricate lawsuit that gave Bernardo Bertolucci's film the fame of a leading case in the connection between cinematography and law, firstly for what it obtained in administrative censorship, that fought against many "symbolic films" in those years, and secondly for the possible criminal charges of cinematographic works deemed obscene.

This is, in a nutshell, the "plot" of the "Last Tango case."

After being subjected to screening by the Commission for cinematographic censorship, Bertolucci's film was initially denied programming permissions. Only after the producer accepted the Commission's request to adapt the film by cutting a few metres of film (the legendary eight seconds) and changing a line, they granted permission to show it. On 12 December 1972 the film received also the authorization of the Ministry of Tourism and Entertainment.

In that same month, the film is shown in a few cinemas in the capital, but Niccolò Amato, Public Prosecutor in Rome, orders for the film not to be shown on the whole national territory because of the "obscene" nature of Bertolucci's film. The documents were transferred to the Public Prosecutor's Office of Bologna for jurisdiction, since the first showing of the film happened at Porretta Terme on 15 December 1972.

The film, according to the prosecution, seemed filled with that famous «exaggerated pansexualism that is an end to itself» that still to this day, as a quick synecdoche, is used to summarize the whole legal matter of *Last Tango in Paris*.

Action is taken against Alberto Grimaldi, producer of the film, Bernardo Bertolucci, director, Ubaldo Matteucci, distributor, Marlon Brando and Maria

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Schneider, lead actors, accused of complicity in the crime pursuant to Article 528 of the Italian Criminal Code (obscene publications and shows). The crime provided by Article 528 was decriminalized by legislative decree no. 8 of 15 January 2016.

The Court of Bologna, in February 1973, resolves the matter with a rare forward-thinking judgement. The «revolting and realistic representations of carnal congresses» contested by the prosecution is contrasted by the «elegant discretion» that characterizes one of the most famous scenes of the film, that is sustained, not without a veil of pungent irony («if that wasn't enough to calm the itchy viewer»), by a solid system of further considerations. Although admitting that the content of the two sodomisation scenes, defined from the off as «highly dramatic and artistically exceptional» could in itself only «skim the limits of obscene schemes or be inserted for an average viewer», the first instance judges recognize the instrumental value of the scenes in the entire narrative and they do not deny the fact that *Last Tango in Paris* satisfies in a clear way the artistic standards of the work of art. After all it can't be up to a court – say the judges – to decide what other means of expression the director could have used to render his intuition «because that would mean introducing a principle of jurisdictional censorship with ethical content in contrast with the effective scope of Article 529 of the Italian Criminal Code».

Therefore, the Court, based on the second paragraph of Article 529, acquits all of the defendants «because the fact does not constitute an offence», maybe putting the hardest verdict in the hands of the audience: «it's up to the public, in a Republic in which freedom of expression is guaranteed for every citizen, to determine if Bertolucci's work, deemed of artistic value by this court, will be considered as such or as a masterpiece».

After also disregarding the requests of the prosecution, the immediate restitution of the original copies of the film is ordered; but the legal peregrinations of *Last Tango in Paris* are only just beginning.

The case reaches the Court of Appeal of Bologna that, with a ruling dated 4 June 1973, believes it must fix the «obvious» and «blatant» «error of judgment» in which the court incurred. Scenes like «the butter one» appear to be of an «emphasized vulgarity that exceeds any breaking point», appear to clearly reveal «the will to excite the lowest of sexual instincts» and turn out to be «condoning pornography, with the intent to pull in the masses to the show, attracted by the stories of this scandalous film».

After underlining insistently (almost obsessively) the motivations of «the disruption of social values» that the film intended to communicate, the Court classified *Last Tango in Paris* as «profoundly immoral», sometimes «boring» or «extraordinarily trivial», giving it the label of a «spectacular “cartoon”». The positive opinions, that indeed were not missing, come only from the worry of being treated as incompetent after the grand clamour the film caused. Even in this case the bitter irony wasn't missing: «oh, that scene in the empty room... it's Pirandello», «the nude canvas of Jeanne near the bathtub... it's a Renoir», the clanging of the subway «it's the preoccupation of poor Paul, the woodworm in his brain, thinking about that unexplainable death». Speaking badly of the film – unless you are with trusted friends – is like speaking ill of the «marvellous (inexistent) dress of the little king in Andersen's fairy tale».

Last Tango in Paris represents a clearly obscene cinematographic production and excludes any recognizable sign of a work of art: an “average” viewer, in fact, is not capable of understanding the “pseudo-philosophic intellectualism” that, according to many, is an integral part of the expressive language that Bernardo Bertolucci chose. The lack of artistic dignity in the work, according to the Court and contrary to what the defendants hypothesized, doesn't require artistic expertise to be confirmed.

Each defendant is charged with two months of prison, a fine of 30.000 *lire* and ordered to confiscate all copies of the film in circulation.

The defendants decide to present an appeal to the Italian Supreme Court (*Corte di Cassazione*). They do not object to the obscenity of the film, but they criticize the lacked application of the punishability exemption established by the second paragraph of Article 529 of the Italian Criminal Code. The Supreme Court, with the ruling of 20 December 1973, clarifies that, whilst the obscene nature of a production should be judged based on the common sense of modesty of an average person, the inquiry on the artistic value of the same production must necessarily be conducted through aesthetic canons. One must evaluate the «balance between the contents and the form, between the message that the director offers and the means that he uses, nonetheless the absence of an excessive satisfaction in obscene work, to appear as an end to itself, that is to say introduced to give the viewer an erotic sensation, instead of harmonising in a combination growing towards feelings and ideal values. The work of art – that isn't necessarily a masterpiece – has to distinguish itself from ordinary commercial

production for dignity in form and expression, for any content of universal intuition».

The Court of Appeal, on the other hand, excluded the artistry of the work, only observing that it's «profoundly immoral because it denies moral values (family, religion, human coexisting, love, etc.) on which civil society is based»: the ruling on the lack of artistry, in short, coincides with that of the obscenity, without the judge having sufficiently separated the two sides of the investigation.

The verdict is cancelled for inadequate reasoning, with consequent transfer of the lawsuit to another section of the same Court of Appeal.

The Court of Appeal of Bologna, returning to have its say on the “Last Tango case” on 26 September 1974 and abandoning the parameter of the average person for the opinion of artistry, tries to clarify the aesthetic canons that would undoubtedly exclude the possibility to apply the second paragraph of Article 529 of the Italian Criminal Code.

In the motivation it is clear that «far from being a masterpiece, *Last Tango in Paris* remains a work of pornography artificially lined with pseudo-cultural implications thought up to assure the accessibility without excessive risk; not dissimilar to similar products destined to be made commercial». The metamorphosis of Paul is resolved in a «cartoon-like stunt that Bertolucci's talent should not have allowed itself» (*sic!*) and all of the film comes down to a «blunt work of pornography».

Here the sentence for the crime of Article 528 of the Italian Criminal Code is confirmed and the confiscation of all of the copies of the film that had already been seized is ordered.

The defendants try again the route of the judges of Piazza Cavour (i.e., the Italian Supreme Court). This time the Supreme Court, on 29 January 1976, confirms the ruling, believing that the sentence itself had sufficiently given reasons to convince the Court of the impossibility to recognize in Bertolucci's film any trace of a masterpiece.

After a series of announcements that followed each other in an unusually short amount of time for the Italian justice system, and after the “seal” given by the Supreme Court's judges, the “Last Tango” *affaire* comes to a standstill for a few years.

The lights shine hard on the case again when, on 25 September 1982, during the *Ladri di cinema* festival – an international event that was held in Rome at *Centro Palatino* – Bertolucci's “obscene anything but masterpiece” is shown, in the presence of the director and other viewers. The film is seized, and a criminal case is opened against

the organizers of the festival. Even Bernardo Bertolucci ends up on the defendants' bench again: in this new chapter of the juridical case of *Last Tango in Paris* the defence of the director is taken on by the attorney Luigi di Majo.

The prosecution asked for the case to be archived, but the judge Paolo Colella decides to proceed with formal inquiry against the defendants. In that instance, after viewing the film, judge Colella orders a collective report to assert the possible artistry of the work. Two cinema critics of different cultural and ideological origins are nominated (Fausto Gianì and Claudio Trionfera) together with a professor of history of entertainment critique (Maurizio Grande). All of them had never expressed an opinion in the past about Bertolucci's film.

With a particularly discussed sentence, the judge Colella, taking on the role of an authentic *deus ex machina* with the possibility to rewrite a finale that was deemed inadequate on more than one account, puts *Last Tango in Paris* in the frame of cinematographic art without hesitation and acknowledges the radical changes that regard sexual morale in the fifteen years that had passed since the first viewing of the film and from which had come a significant downsizing of the sense of reserve surrounding sexuality and its manifestations.

Last Tango in Paris – this is the new finale of the story – not only is a masterpiece, but it contains no trace of obscenity. The defendants are acquitted on the grounds of no case to answer («the fact does not exist»).

A few years ago, I decided to collect and to publish all of the rulings, regarding substance and legitimacy, that defined the court case of *Last Tango in Paris*, and I did so without “cutting” anything out of the (sometimes very long) motivations, to avoid that “censorship”, sometimes masked behind *omissis*, that could obscure any useful inspiration for thought. The sole quantity seems to have a certain eloquence: it seems very interesting that so many words and so many reasons were needed to exclude that the “pornographic cartoon” like *Last Tango in Paris* could undergo the punishability exemption established by the second paragraph of Article 529 of the Italian Criminal Code.

Going through many of the original documents of those trials, it was very impressive to read one of the names and the addresses that “rule” in the list of the accused: «Brando Marlon, born on the 3/4/1924 in Amaha (USA) resident in Los

Angeles, Beverly Hills Mulholland Drive 12900».

Times have changed, prosecutors don't deal with cinema for years and it is not a case that, recently, the crime provided by Article 529 was decriminalized. However, I think that is still important to tell the story of *Last Tango in Paris*: this is a story that is too recent to stay in the dust covered case files of the offices of a forgotten Court, and in the hope that the obscuring fog that surrounded that Court can now be considered completely gone.

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