# Environmental Activism: In Defence of 'Criminal Damage'

## David Lambert, with Senan Clifford

On 12 April 2021 my six co-defendants and I appeared at Southwark Crown Court on two charges of criminal damage and having an article with intent to cause criminal damage. Two years before, almost to the day, we had carried out an action at the Shell building near Waterloo as part of Extinction Rebellion's London protests which started on 15 April 2019. We had broken windows at the entrance, poured fake oil and sprayed messages about Shell on the walls. The action was designed not only to draw attention to Shell's crimes, but also to get us in front of a jury, the threshold for which is £6000-worth of damage. The reason was that we knew that at magistrates level, the law is simply administered by rote; there is very little scope for magistrates to manoeuvre or take account of circumstances. A jury, however, is able to deliver a verdict which considers other factors than just the law – a perverse verdict – if jury members feel strongly enough.

The case did not come to trial for two years, and we eventually got notification of our date about six or seven weeks beforehand, towards the end of February. There followed a fairly frantic period of preparation. Up until this point we had been in the hands of the solicitors whom we contacted at the time of our arrest, and who were also representing the Brazilian embassy and Home Office protesters in separate cases of criminal damage. They had submitted a Skeleton Defence on 8 February, and on 3 March we received the judge's Ruling on the Defence.

In his Ruling, His Honour Judge Perrins said that he saw no reason to go against case law which was clear, that necessity – that is, the argument that the damage was necessary to prevent death or serious injury – was no defence; however, because there were 20 of us and he could not be sure of every detail and nuance we might bring, he was prepared to make a decision on its admissibility *after* we had given our evidence. He ruled out there and then the defences under Articles 10 (freedom of expression) and 11 (freedom of assembly) of the European Court of Human Rights. The solicitors did not include the defence of consent, which one of our group wanted to run, nor the defence under Article 9, freedom of conscience, which the Stop Ecocide campaign has established protects a belief in man-made climate change. Both these we added in an addendum before the trial.

Our solicitors pointed out that once the judge ruled out our defences, they would be unable to say anything, so suggested that perhaps we should sack them either now or possibly after we had given evidence. Some of us had been thinking of getting legal aid so we could be represented, but the Ruling tipped us all into deciding to be litigants in person and to represent ourselves.

Our solicitors continued to provide support via Zoom calls and emails right up to the trial, which was very helpful. We also had the benefit of advice from a sympathetic QC. Between these two sources, and plenty of googling, we familiarised ourselves with what a jury trial entails and, it's fair to say, felt quite heartened by the understanding that the judge is not the judge of the case at all. The jury decides on the verdict, while the judge merely advises on the law. That sounded like some wriggle-room, given that the judge was going to allow us to give our evidence, and only after that to rule it out as a legal defence.

As we all worked on our evidence, it became clear to me that our great strength was that we had taken full responsibility for our actions. Although we would argue that it was not

criminal because we believed we had a defence in law, in fact the real moral strength of the action was that we did know it was criminal but that we were willing to be tried by a jury of our peers because we believed that – whatever the law – we were justified in raising the alarm about the climate. This felt more honest to me, not least because in my police interview I had blown the 'no comment' advice from Extinction Rebellion (XR) and had pretty well acknowledged that I knew what I had done was criminal damage. Of course I knew: who was I trying to kid?

So, as well as preparing evidence, we were familiarising ourselves with the trial process, and learning a lot about how our justice system is framed and and run. We learnt that these 'defences' which were being ruled out to us referred to agreed routes through the trial/legal processes, which are all determined through precedent, and which lawyers are bound by. Our solicitors had advised us that as litigants in person, while the rules also applied to us, the court would be obliged to allow us some leeway.

We realised that a defence need not be framed in terms of those legal constraints. We learnt from our legal friends that in common law, a defence is a very simple three-part process: you say *who* you are, *what* you did, and *why* you did it. And while we would not be allowed to go into the 'objective' facts of climate change, we *would* be able to give an account of our 'subjective' and honest beliefs, and explain why we believed they were reasonable.

This allowed us in court politely to insist that we needed to put evidence of the climate emergency to the jury, because that was part of the beliefs which explained the 'why', and that those beliefs were reasonable. This was how we were able to tell the jury about climate change, about Shell's criminal behaviour over the last 30 years (and more), and about the Government's failure to address the climate emergency.

Several people advised us not to try to be lawyers, and that was a touchstone as we discussed our evidence. We were talking to the jury, not the judge, and explaining why we acted as we did. We realised that they might even be quite interested in understanding the 'why' part, and we realised that to explain why, we had to give a summary account at least of the science, and why it was reasonable to conclude that we had no choice but to break the law.

Not trying to be lawyers or attempting to argue the law with either the judge or the prosecution: that was a wise move. The judge is bound by the higher courts, and there is no point bashing your head against the illogicality or immorality of those rulings. And by not attempting to mount a specific legal defence, we left the prosecution with very little purchase – they had proved (and we hadn't contested) that we had committed criminal damage, yet we still said we were 'Not Guilty'.

Despite the preparation, we had, like any amateurs approaching a professional arena, the impression that self-representation would be difficult and intimidating. In fact, it wasn't. It helped that we were six, and so able to support each other in all sorts of ways. But we found being tried by a jury of one's peers is actually quite an intimate process. Judge and prosecution are peripheral, as you face the jury direct from the witness stand. The judge has already been through your evidence, and given guidance on what you can and can't say, and also warns the jury that if he interrupts, it is not to be taken as any form of criticism of what is being said – just ensuring it sticks with what is permissible.

Before the trial, we did discuss the possibility of disrupting the court with an act of contempt. Several XR defendants had already done that in the magistrates courts in recent weeks, gluing on and accusing the bench of being complicit in failing to protect lives. We decided, however, that to do so, in advance of a verdict, would be to show contempt not just for the law (absolutely!) but also for the jury – that is, our

peers – and the whole focus of our action. We had to trust that our evidence of the climate emergency, and the truthfulness we each brought to our evidence, would affect them. Being up close to the judicial system is really interesting. Southwark Crown Court is an ugly red-brick 1970s building, devoid of any kind of architectural significance, clearly built 'on the cheap' in what was then a down-at-heel corner of central London. It turns its back on its magnificent situation on the banks of the River Thames overlooking the Pool of London, at the heart of the city, and instead faces the rear of Marks and Spencers. Unlike the Gothic Royal Courts of Justice on the Strand, this building aspires to no religious or moral authority; its confidence comes solely from its brutish bulk on which it risks not one square inch of ornamentation. Its design says, 'I am nothing more than a legal processing-unit, a mechanistic dispensary of verdicts and sentences'. Interestingly, the judge had to remind the jury in his summing up that this was a court of law, not a court of morals.

My inspiration going into the trial was Lewis Carroll. I re-read the end of *Alice in Wonderland* before I went up to London: the terrifying authority of the Queen of Hearts, the helpless squirming jurors; the madness of it all – 'Sentence first, verdict afterwards'; and of course, 'Off with his head!'. I was even ready to start my evidence with the King's instruction, 'Give your evidence, and don't be nervous, or I'll have you executed on the spot'. In the end I didn't, because actually the process did not feel as hostile as that.

But some elements *were* pure *Wonderland*. The ruling on our defence, for example, was that we would be allowed to present it but that it would then be 'highly likely' that the judge would instruct the jury that it was inadmissible. In court, we were advised that we could say our action was *justified* but certainly not that we had a *defence*. We were also advised that we could give evidence about our *belief* that there was a climate emergency, but not evidence that there *was* a climate emergency. And after we had been reminded that Shell was not on trial here, the judge repeatedly asked us to 'stick to' answering 'Why Shell?'.

Some of the absurdity came from our accepting that we had caused the damage, which left the prosecution with little to prove and possibly a little non-plussed – after a while, the exasperated banging of files, snapping-shut of laptops and eye-rolling started to become part of the fun. When one of us tried to add to their closing speech an apology for having got the facts wrong – 'I meant to say I broke three windows, not two'– the barrister objected sternly that they could not possibly add further evidence at this stage; when another asked whether it would speed up proceedings if he explained that he had done all the painting and damage up on the canopy, he was told that was procedurally quite inadmissible.

We accepted that this was not the place for a lecture about the climate, and undertook not to use the witness stand as a political platform. And we also agreed it was not Shell on trial here. The judge was clearly keen to make this clear, not least because the Crown Prosecution Service was breathing down his neck about this being turned into a protest event. So I think that bought us some good will and, more importantly, a little more leeway.

We acted throughout with respect – largely fuelled by our genuine respect for the jury; and when we did argue a point we were careful to keep our cool, which usually meant backing down in the end. It wasn't difficult; the judge was always polite and clear; not kindly, but patient in his efforts to explain his guidance and its reasons.

The prosecution evidence categorically proved what we had done, aided by our not contesting any of the main facts. We had all waited to be arrested – some of us were glued on and had no choice – and there was no argument over *what* we had done: the issue of course was *why*.

So that was over quite quickly, and we then each in turn gave our defence evidence. All but one of us referred to being signed-up Conscientious Protectors, the Stop Ecocide campaign's Trust Fund (https://www.stopecocide.earth/) and one of us also ran the legal defence that he believed he would have had Shell's consent for the action. While the Trust Fund was found to have no legal status, the consent defence was not ruled inadmissible and survived to form part of the jury's deliberations.

By the time all six of us had finished explaining who we were, what we had done and why we had done it, the jury had heard a lot about the climate and how catastrophic things really are, a lot about Shell, and a lot about the failure of the State to protect its citizens. And they had heard it not from a barrister, but from individuals: this was an emotional process.

The 'leeway' we were granted to talk about the climate emergency was, we think, crucial in its effect on the jury. We gave them the facts on the science; on Shell's historic role, first in sponsoring that scientific knowledge, and then in sowing doubt about it, creating the whole 'climate denial' issue that has stalled any effective action; and we also outlined government failures to tackle the emergency at all. It was a whistle-stop briefing, including sharing the 'hockey-stick' curve showing $CO_2$ emissions. This graphically illustrates how far beyond 'normal' we are, and which we referenced when asking the jurors to act 'outside normal' in their verdict.

The judge then summed up his legal directions to the jury, confirming that there was no defence in law, and that they must not be swayed by sympathy or emotions, but instead make a decision with a cool, calm head. This was again pure *Alice.* The jury's oath – a copy of which, interestingly, they asked to see during their deliberations – is 'to give a true verdict according to the evidence', but a 'true' verdict was glossed by the judge in his directions as meaning having 'all due regard to the law'. The judge had allowed the *evidence* to be heard – and the jury could not unhear it – but he had then advised them that it was no defence in *law,* so they had been left to ponder the difference between the two.

The prosecution gave a closing speech, saying again that it was clearly criminal damage, clearly there was no defence in law, and clearly the jury must find us guilty. Our closing speeches were all different, but we were basically all appealing to the jury to follow their conscience in deciding on a verdict. We emphasised the judge's directions that their decision was on the evidence, and that their decision could take all that evidence into account, not just the open-and-shut question in law. We acknowledged we had no defence in law, but were asking to agree that we had been 'justified' and were therefore not guilty.

I have just picked up some notes on our defence which I wrote at some point in the weeks leading up to the trial. I am amazed by the tone – demanding, combative and argumentative towards the law. Aggressive over-compensation, of course. I am amazed because by the end of the trial, my closing speech was questioning, uncertain and empathetic, and the difference marks how much I had learnt from the trial experience itself. Meeting the jury had allowed me to share my vulnerability and uncertainty, and had allowed me to express the humility I had felt but which in advance, imagining some kind of gladiatorial battle, I had thought inappropriate.

The verdict was returned after something like seven hours' deliberation, and we were all found not guilty. There is another whole essay to be written about the power of the jury within the court system, and the courage of jurors in taking extraordinary decisions.

When it was all over, we were naturally delighted and relieved. There are of course no winners in this outcome: we are all still losers against the forces of profit, procrastination and obfuscation. Still, while the mainstream media

could characterise the defendants as extremists and / or middle-class hypocrites, it could only stay quiet on the ordinary people who had delivered their verdict on the climate and on the law. The trial is no victory, just a tiny step in building public awareness and empowerment over the climate emergency, and does reinforce the power and courage people show when allowed to take responsibility for their lives and make their own decisions for the greater good.

## David's Closing Speech

Dear members of the jury,
As I said before, thank you for being here; thank you for all the attention you have given us, especially when so much of what has been talked about is so upsetting. I am sorry we have had to share it with you in this way rather than in more sympathetic circumstances.

I had not appreciated what a 'jury of your peers' really means until you all walked in here, and I have to say that I am glad that a verdict on what we did is entrusted to you. You are our community, and I am glad of it. It may sound unlikely standing here in the Crown Court, but there is nowhere I would rather be, sharing with you what Polly Higgins, the lawyer behind the ecocide campaign, called the great work of our time. I feel confidence – not about your verdict, which is for you alone – but confidence in sharing this crisis with you.

For that is what this is. We are sharing this crisis with you. By undertaking an action that would result in our being judged by a jury, we are seeking justice not from the law, but a verdict from our community – were we right or wrong, was our action justified or not? If the climate emergency is what we believe it is, and neither the judge nor the prosecution has raised any dispute about the mass of evidence on the climate emergency we have imposed upon you, what then should we do? Were we wrong to think that we are being failed by government, by business and the media, and – in this specific crisis – also being failed by the law? And if not, if we are right, then what can we all, as ordinary people, do together to remedy that? We are not here to insist we know best; we are here to share this question with you.

Our case is not strong in law, but we feel it is strong in conscience: we would not be here if we had not acted on the basis of our conviction that we must do whatever it takes to make government recognise the *emergency* for what it is – not just a phrase for politicians' speeches, but a barely imaginable horror, no longer on some distant horizon, but unfolding in real time in the real and beautiful world all around us.

Members of the jury, on the face of it, this case is open and shut. With one or two minor exceptions, we do not dispute the prosecution evidence about what we did, and you have seen the evidence. We did intentionally and deliberately cause that damage. In law, this is the simplest of cases; there is now officially no defence, there is nothing for you to discuss.

But I hope that, having listened so patiently to all the evidence, you do not find this case open and shut. I hope you agree that it is not simple at all. I hope that you will decide that you must listen to your conscience as we have listened to ours, and that you will be in that jury room arguing – yes, they did the damage, but yes, Shell *are* the real criminals, yes, the government is allowing business as usual to lead us over a cliff edge, and yes, the future is being stolen from our children and our descendants. And I hope you feel like I did in September 2018, when I heard that talk about the science: oh my god, I had no idea. And so then I hope you too will be thinking, what can I do now, with this moment I have been given?

You have been told that what we said to you by way of defence, or reasons, or excuse or explanation is not admissible in law. His Honour [HH] has allowed us to give our evidence about why we acted as we did: he has allowed you hear that evidence, but he has now told us, and you, that whatever you may have thought about those motives and explanations,

there is no *legal* defence for what we did. There may be no legal defence, but obviously you cannot un-hear all the *evidence* you have heard.

What HH has not said is that, because there is no defence in law, *therefore* you must find us guilty. The prosecution has said you must, but that is their job; he has not. He has given both you and us careful guidance on the law on the legal framework around criminal damage. And you have sworn to give a true verdict according to the *evidence* you have heard. But HH has not told you that you *must* find us guilty because, as he has said, he is not permitted to; it is, as he has said, for you to decide. You have the right to find us not guilty, and in these disastrous times, you may feel you have a duty to act according to your conscience. The decision is yours alone.

You will recall that part of my evidence was that the law as it stands is failing to protect us and to protect life on earth. I have told you that we broke the law because in this area the law is broken, and our actions in April 2019 were intended to demonstrate that failure. Nothing has changed; those temperatures are still rising, the weather is still getting more dangerous and life-threatening, and the government still has no emergency plan; the climate emergency has never made it to the government's famous COBRA committee which, if you remember, regularly met to decide how to deal with coronavirus.

We hope you will agree that the damage we caused was negligible compared to the damage being perpetrated by Shell. We hope you will agree that we acted carefully and consciously, with love and with grief rather than with anger or malice. We hope you understand that we acted solely to raise the alarm; we had nothing to gain. We hope you believe that the situation is deadly serious, and that you could make a difference by finding us 'Not Guilty'.

I have referred in my evidence to what I know about the climate breakdown, and the urgency of the threat it poses. That is, the evil I believe I acted to avoid. The prosecution has referred to this as subjective, as if it is just a personal belief, like bananas taste nicer than oranges. I hope you agree that the overwhelming scientific agreement on the climate emergency, and the chorus of eminently reasonable voices crying out for action, constitute not just a personal belief but a stark and terrible reality. This stuff is real; it is really happening: we need government and business to tell the truth and act as if the truth is real.

Members of the jury, we are all here together in a moment of history. Last year, we saw what an emergency looked like and what a government can do, spending billions to protect the population. The climate emergency is covid to the power of ten, of a hundred, a thousand. The warnings are all around us. We are living in a pivotal moment, everything is falling apart. This plane we are all on is coming down: do we nose-dive, or do we seek ways to prolong the glide and find some way to crash-land and save as many lives as possible?

While our government – like all governments – avoids serious action, what can you or I do for our families, for our communities, for communities all across the world? All the experts say, recycling our rubbish, or buying a bike, or even going vegan, is not going to cut it – only action at a government scale will work. But today, there is something you *can* do.

Senan has already referred to Winston Churchill – how the suffragette, Theresa Garnett, beat him with a horsewhip on Bristol station platform. I looked it up: as she did it, she said, 'Take that, for the insulted women of England'. He was Home Secretary at the time – imagine that! Churchill may not have understood the cause of women's suffrage, but he did understand the need to act when faced with a real threat of death and serious injury, with the rise of Hitler in the 1930s. In 1936 he gave a speech in Parliament in which he said:

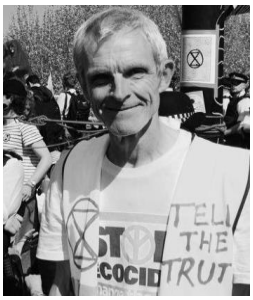
> Owing to past neglect, in the face of the plainest warnings, we have now entered upon

> a period of danger…. The era of procrastination [putting-off], of half-measures, of soothing and baffling expedients [manoeuvres], of delays, is coming to its close. In its place we are entering a period of consequences…. We cannot avoid this period; we are in it now.

We cannot avoid it, we are in that period of consequences right now. What do we do, what do we all do – you, me, His Honour, Ms Wilson and Ms Matthews?

Members of the jury, all of us in this courtroom are together facing a terrible threat to life on earth. Please trust to your conscience as we have trusted to ours. We acted to save life. If you find us not guilty, you too will be acting with the same simple purpose.

## About the contributors




**David Lambert** is a historian and landscape consultant. In 2016 he helped set up Politics Kitchen in Stroud, inspired by the ideas of active listening and a new way of doing politics. In 2018 he discovered the awful truth about climate change and became an active member of Extinction Rebellion. He is still coming to terms with unfolding ecological collapse and he continues to seek ways to communicate understanding of the crisis.

**Senan Clifford** is an Extinction Rebellion activist, who has been interested and involved in men's work for 30 years; everything from men's groups to domestic-violence projects, 'rites of passage' events to social history. During this time, he has also been a carpenter, and school teacher, a designer and craftsman; and now, having just turned 60 years old, is at last writing his book about patriarchy and men.

### SOME HUMANISTIC WISDOM

"But man is a part of nature, and his war against nature is inevitably a war against himself."

**Rachel Carson, 1907–1964**