The Oxford English Dictionary gives the modern meaning of ‘emergency’ as a ‘juncture that arises or “turns up”; esp a state of things unexpectedly arising, and urgently demanding immediate action’. The first use of this definition is attributed to the poet and preacher John Donne, who in 1625 proclaimed that ‘as manna tasted to every man that he liked best, so do the Psalms minister instruction, and satisfaction, to every man, in every emergency and occasion’ (1990, p. 171). Donne begins his sermon with a quote from Psalm 63, which reads: ‘Because thou hast been my help, therefore in the shadow of thy wings will I rejoice.’ The context of this psalm is one of peril – it was supposedly written by King David whilst he was alone and persecuted in the wilderness of Judah. In this line, David overcomes the wretchedness of his present by taking solace in a past in which he was helped by God, and a future in which he will rejoice in God’s shelter. Donne reasons that David is impervious to harm, since his concern is for a spiritual life to which he has constant access, and not the material life that is fraught with hazard. This new definition of the term, therefore, both identifies and remedies the risk constituted by emergencies. By looking to the past and future, and by prioritising those aspects of the present that transcend the material world, ‘emergencies’ in the here and now may be overcome. This establishes a precedent for Ben Anderson and Peter Adey’s model of an emergency, in which
‘promissory and threatening futures achieve some form of presence in the here and now’, with one significant exception (2011, p. 1096).

In Donne’s idea of emergency, the ‘ministration’ to which he directs his attention is located in David’s relationship to God. The psalm becomes testament to this relationship, a text offering perpetual remedy for ‘every man, in every emergency and occasion.’ Thus, the corollary to ‘emergency’ is a body that stands apart from the affected situation, since it does not operate in the material world and can remain constant even, and particularly, in the face of distressing events. This is a common phenomenon in the discipline of political theology, one which Simon Critchley describes as the reliance of political organisation on ‘fiction’:

government requires make-believe, whether the belief is in the divine right of kings, the quasi-divinity of the people that is somehow meant to find expression through the magic of representative government, the organ of the party, the radiant sun-like will of the glorious leader, or whatever. (2014, p. 81)

In other words, any method of political organisation cannot endure without a dimension that exists purely as a belief. Now, the idea of ‘belief’ does function in contemporary emergencies. As Adey et al. put it, ‘emergency is a term inseparable from faith in action: the promise that some form of action can make a difference to the emergent situation’ (2015, p. 3). But this is not the belief that Donne was describing, since his is a belief arbitrated by the subject for and by themselves. The belief that operates in the view described by Adey et al. is in the capacity for an external body to remedy the emergent situation. It is a belief arbitrated by the subject to and for another. The question then arises – where is the shift from the self-actualised emergency that Donne describes, to the kind of emergencies which separate the spectator from the spectacle; the kind to which this book has been addressed?

A useful place to begin tracing this shift is the philosopher Carl Schmitt, who in his book Political Theology (1922) linked the emergency to the figure of the Sovereign. This figure, the representative of the people charged both with identifying and responding to states of emergency, was initially compared to the divine:

To the conception of God in the seventeenth and eighteenth centuries belongs the idea of his transcendence vis-à-vis the world, just as to that period’s philosophy of the state belongs the notion of the transcendence of the sovereign vis-à-vis the state. (2005, p. 49)
The power of the Sovereign (the body who stands apart) finds its ultimate expression in a principle of suspension, where the law is legitimised insofar and because it can be suspended by that Sovereign. Schmitt calls this the ‘state of exception’, a term which has since become synonymous with many legal considerations of emergencies. And, significantly, when he discusses the state of exception in the nineteenth and twentieth centuries, Schmitt does not see the Sovereign as instrumental to its operation any more, but rather that the state of exception has become a naturally occurring phenomenon within society (ibid., p. 48). If I have read Schmitt correctly, his view of the Sovereign originally mirrors a divinity whose transcendence relies upon personal spirituality. This chimes with the relationship between David and God that Donne saw as both the emergence and remedy of emergencies. The Sovereign, at this juncture, relies upon a similar engagement with the personal. In Schmitt’s view of the nineteenth and twentieth centuries, however, this personal connection between subject and Sovereign is no longer required, because the latter’s power has become crystallised within the mechanics of society itself. Leonard C. Feldman reads this as Schmitt proposing the contemporary state of exception as an automatic corrective, the ‘eruption of real life into the machine of the modern state’, which ‘redeems a corrupt liberal constitutional political order that had grown “torpid by repetition”’ (2010, p. 141). Tom Sorrell then points to this as an unsavoury bent in Schmitt’s thought, one that does not direct Sovereign power towards public safety, but rather to the ‘energizing of a popular will and, for example, enabling it to realise in history a certain sort of mythic self-image in the face of enemies’ (2013, xii). In other words, Schmitt believes that the proper function of the Sovereign in declaring the state of exception is not to protect the people, but rather to energise their own will in tune with the will of the people. Thus, as Critchley reminds us, ‘Schmitt’s argument for the state of exception as exemplifying the operation of the political is also an argument for dictatorship’ (2014, p. 106). It is not without relevance that Schmitt was an active participant in the Third Reich.

Nevertheless, his ‘state of exception’ has proven hugely influential, not least because of the seemingly intractable problems that it poses. On the one hand, it appears to invalidate the laws upon which the state otherwise builds its authority, and on the other it de-exceptionalises the exception. These are Giorgio Agamben’s conclusions when he says that the law ‘is made of nothing but what it manages to capture inside itself through the inclusive exclusion of the exceptio: it nourishes itself on this and is a dead letter without it’ (1998, p. 27). In a later work, Agamben clarifies this process through the symbol ‘law’, designating the law that claims legitimacy through its ability to erase itself (2005, p. 39).
A high-profile and particularly ghoulish example of this process was the USA and Great Britain’s legitimisation of torture, in so-called ‘black site’ prisons in occupied Iraq and Afghanistan, during the US occupations between 2003 and 2006 (Sheets, 12 October 2014). The programme, whose name ‘extraordinary rendition’ directly mirrored the state of exception, employed a classification of prisoner known as ‘unlawful combatant’. This was an existing term that Knut Dörmann, writing for the Red Cross, defined as ‘all persons taking a direct part in hostilities without being entitled to do so and who therefore cannot be classified as prisoners of war on falling into the power of the enemy’ (2003). Broadly speaking, any person not affiliated with military organisations of warring states but who actively engages in those states’ conflict falls under this classification. In 2002, President Bush released a military order entitled ‘Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism’ (2002), stating that ‘an extraordinary emergency exists for national defence purposes’. Within the order he proclaimed that members of Al-Qaeda or those with any involvement in ‘international terrorism’ (which was never defined) would come under control of the Defence Secretary. Further, given the urgency of the terror threat, that it was ‘not practicable to apply […] the principles of law and the rules of evidence generally recognised in the trial of criminal cases in the United States district courts’. The groundwork was then set for his administration’s understanding of ‘unlawful combatant’; a person who falls outside of the Geneva Convention’s provision of rights such as limited detention without evidence, and fair trial. His order thus explicitly rejects the standard ‘principles of law’, as well as defining those to be excluded from these principles by including them within the realm of exclusion. Agamben described this category of person as homo sacer, a figure scrutinised in Chapter 3 of this book.

In recent years, there have been several attempts to uncouple the ‘emergency’ from Schmitt’s ‘state of exception’. Nomi Clare Lazar, for instance, argues that ‘those who embrace the exception as a discrete category in the first place provide a carte blanche for politicians. If norms are suspended, anything goes’ (2009, p. 4). Her argument tries to reframe the emergency as a moral rather than a legal phenomenon, and takes inspiration from John Locke’s liberal philosophy which states that in emergencies the government may ‘act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it’ (1980, p. 160). It is a valiant attempt to counter Schmitt’s belief that liberalism cannot cope with emergencies, and Lazar’s conclusion – that political and moral constraints upon government are as important as legal ones – is valuable, even if the actions of political leaders in recent history
offer little to support this (ibid., p. 159). Might President Bush have been prevented from the excesses of torture if his administration had been forced to provide ethical and political arguments to support their enhanced interrogation programmes? It certainly didn't deter President Trump from a campaign promise to 'bring torture back' in his successful bid for the US presidency… (Weaver and Ackerman, 26 January 2017).

Unfortunately, therefore, Lazar's is a rather weak argument, in addition because ethical arguments for torture are available in western philosophy in the early twenty-first century. Sam Harris (4 April 2013), for instance, uses the 'ticking time bomb' thought experiment to offer a utilitarian justification of torture. Harris points to what he sees as a hypocrisy between the celebration of dropping bombs that kill large numbers of people, against the revulsion of torturing one person in order to locate a hypothetical bomb, which, unless uncovered quickly, would also kill large numbers of people. His argument charts a bizarre course through Schmitt's state of exception:

> Although I think that torture should remain illegal, it is not clear that having a torture provision in our laws would create as slippery a slope as many people imagine. We have a capital punishment provision, but it has not led to our killing prisoners at random because we can't control ourselves. While I am strongly opposed to capital punishment, I can readily concede that our executing about five people every month hasn't led to total moral chaos. Perhaps a rule regarding torture could be applied with equal restraint. (ibid.)

The fact that Harris is able to say in apparent seriousness that torture should remain illegal whilst being expressed in a legal exception demonstrates both the influence and complexity of Schmitt's thought. The law, which by virtue of its proper name should be immutable, is predicated upon the conditions of its own suspension in exceptional circumstances. This is how we have come to understand 'emergencies', and these are the stakes upon which our understanding is founded. In emergencies, apparently, anything is permitted. When Harris comes to the ethics of his argument, his focus is always towards the existing horrors of war, in much the same way as was demonstrated by Hilary Benn in his speech to parliament in December 2015 (see the Introduction to this book). But although Harris’ position may be challenged in a similar fashion – instead of justifying further atrocity by pointing to existing atrocity, the focus should be on reducing the existing atrocity – these arguments emerge with common frequency across the moral and legal philosophies of Oren Gross (2004) and Alan Dershowitz (2011), for example. Lazar’s Lockean position,
although appealing as a refutation of Schmitt, contains severe problems in terms of its actual application.

An alternative challenge to Schmitt is offered by Tom Sorrell, who takes issue with the former’s reading of Thomas Hobbes. Hobbes believed that the state of nature was one of all-out war, and that therefore unless ‘people submit in the right way to a sovereign with unlimited power, they face war with its greatest of all calamities’ (Sorrell, 2013, p. 30). In other words, the legitimacy of both the Sovereign and the state is derived from an underpinning threat of violence which would erupt in their absence. Where Hobbes differs from Schmitt is that the former believes the Sovereign is ‘supposed to embody public and impersonal judgement, and is supposed to be a means of reducing a plurality of conflicting security plans to a single co-ordinated plan’ (1996, xiii). Not the energising of a collective identity which leads Schmitt to Hitler, in other words, but rather the manifestation of a collective will for the security and protection of that populace. At the epicentre of this collective will is the need to protect life, and a belief that the will of the individual (as an agent in the state of nature) is irrational or life-threatening. Thus Hobbes:

> the use of Lawes […] is not to bind the People from all Voluntary actions; but to direct and keep them in such a motion, as not to hurt themselves by their own impetuous desires, rashnesse, or indiscretion […] the good of the Sovraigne and People, cannot be separated. It is a weak Sovraign, that has weak subjects and a weak People, whose Sovraign wanteth Power to rule them at his will. (ibid., p. 240)

The key to creating laws which, in a Hobbesian sense, will provide the basis for a strong Sovereign and strong populace, is to prioritise the preservation of (human) life above any and every other consideration. Under this philosophy, it is necessary that this function falls to the Sovereign as the people are incapable of extracting themselves from ‘impetuous desires, rashnesse or indiscretion’. Sorrell modifies this thinking by demonstrating that people are capable of overcoming selfish desires, even in times of peril, but keeps the essential framework of Hobbes’ model intact. Thus, Sorrell envisages a collective view of what he calls a ‘security regime’ in which all have a democratic say in the construction of laws, and in which the preservation of life outstrips any other consideration:

> A neo-Hobbesian security regime could criminalize the wearing of national costume or singing of national songs, if rioting were regularly the result of singing the relevant songs or putting on the relevant costume.
In criminalizing these things and preventing the expression of identity, it would not be killing off the people involved, even if each preferred death to not being able to wear the clothes or to not be able to sing the songs. On the contrary, it would be proving in a way that wearing or not wearing a costume, singing or not singing certain songs, is not the end of the world. (2013, p. 52)

This is a rather alarming vision of an absolutely homogenised society, and its tenets are strangely credulous. Sorrell himself admits that there is no especial link between a ‘frightening state of nature and specifically civil emergency’ when he observes the lack of civic breakdown in Lower Manhattan in the days following 9/11 (ibid., p. 45). The authority upon which his security regime criminalises cultural practices is thus inherently flawed, if not entirely suspect. Also, it is not clear which ‘costumes and songs’ would be favoured by those within the security regime, or by those who had voted for its members. Sorrell’s view offers no space for the asymmetry that places some people in minority positions for whom national self-identification becomes a frontier of resistance against oppression, nor does he bother to determine the cause, function and/or direction of his hypothetical ‘riots’. What he does do is demonstrate the difficulties of narrowing the gap between Schmitt’s Hobbesianism, with its dictatorial stripping of individual agency within the apparatus of the law, and Lazar’s Lokeanism, with its weak reliance upon non-legal constraints in order to preserve the rule of law and prevent the worst excesses of politicians in times of ‘emergency’.

Further complications are opened up by Feldman, who returns the Hobbes/Locke debate to its temporal dimension. Locke, he observes, permits the activities of state in times of emergency ‘without the prescription of the law, and sometimes even against it’ because ‘law-making power […] is usually too numerous, and so too slow, for the dispatch requisite to execution’ (2010, p. 148). This kind of power is referred to as ‘prerogative power’, an exclusive power available to the prince (Locke’s word for Sovereign) which is thus not exceptional but built into the fabric of the constitution from which the Sovereign exercises their power. The problem then becomes the incremental assumption of this prerogative power by successive princes, so that ‘a good prince may be followed by a “weak and ill prince” who claims extra-legal prerogative as “prerogative belonging to him by right of his office”’ (ibid., p. 149). It is difficult here not to think of the unprecedented (and previously unconstitutional) powers to make war that were bequeathed to President Donald Trump by virtue of orders and directives of his predecessors (Feldman, 11 April 2017). For Feldman, therefore, to focus on the moment of decision – as
Hobbes and Schmitt do – is a mistake, since it presumes the operation of Sovereign power in what he calls a ‘normless void’. Following Foucault, Feldman sees the operation of sovereign power as ‘shaped by the logics and practices of governmentality as well as the pressures of resistant practices’ (2010, p. 152). Thus, far from being called into being at the point of urgency, prerogative power is ‘the emergence of governance as a particular set of practices, knowledge and values’ (ibid.). Feldman’s optimism is hardly borne out, however, when considering an actual case study of emergencies being used as an instrument of governance, which occurred within the project of British colonialism.

Stephen Morton uses the contradictions of Schmitt’s state of exception to illustrate systems of oppression within contemporary governance, specifically those that derive from colonialism. His rationale is straightforward; whilst he does not claim the British colonies as the zones par excellence of the state of exception, still:

> contemporary states of emergency owe much to colonial forms of sovereignty, not only because many colonial states permitted practices such as detention without trial, torture, execution and other forms of violent state repression, but also because the practice of colonial governmentality complicated the distinction between norm and exception that underpins the rhetoric of emergency. (2013, p. 3)

It is telling, of course, how often zones outside of the domestic spaces of targeted audiences cropped up, over the course of this book, as stages for the production of emergencies.

In terms of Morton’s point about ‘complicating the distinction between norm and exception’, this appears to arise as a disjuncture between the colonial subject and the rule of law. After the seventeenth century, Nasser Hussain points to a post-civil war emphasis on the ‘rule of law’ (as opposed to the rule of the Sovereign) being the key arbiter for British self-fashioning. It was also a driving justification for the projects of colonialism; the British depicted their ‘uncivilised’ subjects as having previously lived under despotism, and colonialists were therefore ‘overcoming the sovereign excess of despotism in favour of a rule-bound, bureaucratic form of government’ (2003, p. 38). Parallel to these declarations, ‘states of emergency’ were commonplace under colonial rule, and a key legacy in India and Pakistan, for example, is that the courts have frequently suspended constitutional rights under the aegis of ‘emergency’ ever since. Stephen Jacobson points out that this doctrine ‘boomeranged back to the British Isles in the form of the Northern Ireland Emergency Provisions Act (1973)’ which allowed terror suspects to be tried by a
judge without a jury (2006, p. 179). In other words, the emphasis on rule of law combined with racist ideologies that saw colonised subjects as incapable of self-regulation under that law, enabled perpetual suspension of law to maintain the status quo. Hussain quotes an early nineteenth-century English judge, who, presiding on a case of habeas corpus in India, complained that ‘there is always wanting that similarity of circumstance which pervades all English cases, arising from race, history, religion and constitution, and which form the unnoticed but not the less well recognized substratum of every English decision’ (2003, p. 87). The double bind was that English law was supposedly brought in to ‘civilise’ the asymmetrical despotism of ‘primitive’ Indian sovereignty, but the people of India were deemed too ‘uncivilised’ to abide by its doctrines. States of emergency – frequently actioned in colonialism through martial law – were employed ostensibly as instruments of remedy. Thus, Jacobson observes, the framing of martial law within the logic of the common law:

permitted publicists and apologists to continue to claim – genuinely or disingenuously – that granting rule of law to the colonies was, and remains, one of the everlasting legacies of the British empire. Reality was that the frequent use of emergency power made normalcy an increasingly precarious situation. (2006, p. 180, emphases added)

There is no small irony in the thought that the emergencies that have become commonplace apparatuses for the assumption of extraordinary power within twenty-first-century liberal democracies may have first been trialled as means of colonial subjugation. No small irony, but little comfort.

David Scott points out that in tandem with considerations of the ‘rule of law’, the other main strategy of postcolonial study has been to ‘demonstrate how colonialist textuality works at the level of the image and language to produce a distorted representation of the colonized’ (1999, p. 22). This strategy, heavily influenced by Edward Said’s Orientalism, is focussed on cultural activities of ‘writing back’, with formerly colonised subjects negotiating and tackling the practices through which they had been ‘authored’ in and by colonialism. Morton reminds us, of course, that these practices of subjugation through authorship continue more or less unabated to this day:

The framing of Muslims in the dominant discourse of terrorism has also provided the justification for political techniques such as the suspension of human rights for Muslims in the diaspora, the ‘rendition’ of Muslims
suspected of terrorism to locations beyond the jurisdictions that guarantee the rights of such prisoners and the indefinite detention of so-called ‘enemy combatants’ at global-war prisons. (2013, p. 212)

He provides scathing reviews of some post-9/11 British novels that depict Muslims in such light, and says of Martin Amis for one that his ‘framing of Muslims and of Islam as a threat to western liberal values aids and abets the argument for emergency legislation that empowers western liberal states to discipline and punish individuals it deems to be dangerous’ (ibid., p. 216).

Legally, the emergency is a nebulous and imprecise entity, and this discussion of its usage under colonialism is intended to show how it became a ‘normal’ executive instrument – in the process, as Jacobson puts it, rendering ‘normalcy’ an increasingly precarious situation. But in colonialism, and thus in the work of post-colonialism, it must be remembered that there is a co-dependency of legal and cultural practices. It is significant in the example above that Morton engages with dispersed practices of control rather than the nominative topic of emergency itself. States of emergency do still exist as discrete entities within law, of course, and are used to wield executive control – as I evidence in this book through the examples of torture under President Bush and the reprisals to the Paris attacks in 2015. But it is no longer (if indeed it ever was) sufficient to only focus on these officially declared emergencies, since state apparatuses are fully capable of legitimising their actions by appealing to an emergency without having to officially declare one.

Our current understanding of emergency, as I have endeavoured to demonstrate in this brief account, has a complex and unsavoury history. What began as an attempt to historicise (and thus provide strategies of redress) for a crisis within a current situation has variously been used to justify dictatorship, colonialism and multiple other forms of violence. In the process, emergencies have been employed to grant unprecedented powers to heads of state, and have been denuded of their historicising function. To declare an emergency, in the twenty-first century, is both to reaffirm the hegemony of the present, and to destabilise ourselves within it.