Dear workshop participants,

Thank you for taking the time to read this chapter of my dissertation, “Forensics of Finance: Colombia’s Experiments with Transition.” The chapter is an effort to bring into relation two distinct historical processes in Colombia (a financial crisis and peacemaking) in order to show how, from this unlikely convergence, would emerge a new formation of forensic knowledge that I call the “forensics of finance.” The three subsequent chapters explore various aspects of this new formation in greater specificity.

I am in the final stages of writing the dissertation and would greatly appreciate your feedback on the soundness of the argument (especially what is/isn’t working in relation to my claim regarding the alignment between forensics, finance, and political transition). Because the chapter turned out to be longer than I expected, feel free to skim/skip Part III (page 41 onward). If you read the concluding section of Part III you will get a gist of the last move of the chapter.

CHAPTER 1
THE CONJUNCTURE OF FORENSICS OF FINANCE

Part I

The (First) Conjuncture

“What sort of crisis is this?”
Stuart Hall

“It is not a moment to fall back on economic determinism, though it may be tempting to do so, since the current crisis seems to start in the economy, with the collapse of the global financial system and the banks. But any serious analysis of the crisis must take into account its other ‘conditions of existence’.”
Stuart Hall

1. Introduction

In Colombia the year 2012 was not just momentous but “evental” (Scott 2017, 56). Soon after being elected president in 2010, Juan Manuel Santos began secret peace contacts with the

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1 Hall 2011, 705.
2 Hall and Massey 2010, 57.
3 I use the term “evental” here, borrowing from David Scott. In his 2017 book on Stuart Hall, Scott described Hall’s life-long commitment to conjunctural analysis as a concern with the “evental present,” a “new configuration of the present” that can last a long or short time (in contrast to the “experience of temporal presentness”). According to Scott, what defines this approach to the present is that “although time is central to its duration, the passage of pure time itself
country’s oldest insurgent group, the FARC. In October 2012, after two years of exploratory conversations between the government and delegates from the FARC’s high command, peace negotiations were officially launched. At the ceremony, held in Oslo, representatives of the two parties made grandiloquent speeches that did little to assuage the national public’s ambivalence towards a negotiated end to the war with the FARC. At the same time, far from the ceremonies of fledgling peacemaking, a large-scale financial scandal involving the brokerage company that controlled thirty percent of Colombia’s stock market operations, mired the country’s financial regulator as well as the President’s cabinet in a frantic effort to avoid “financial crisis.”

This chapter begins at the scene of derivative catastrophe. On November 1st 2012, less than three weeks before peace negotiations began in Habana, Cuba, Colombia’s foremost political cartoonist, known as Vladdo, tweeted: “Interbolsa, Colombia’s largest financial intermediary, is in serious trouble.” Although not yet known by the public on that day Interbolsa had defaulted on a multimillion-dollar loan, an event that would expose a mass embezzlement scheme involving the money of hundreds of Interbolsa’s clients. Described as “Colombia’s 

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(whatever that is) is not what governs the rhythms of its temporal presence or absence, its coming into being or passing away” (Scott 2017, 56–57, 60). I use the category to introduce my investigation of 2012 as the year when a conjuncture – an evental present – began coming into form.

4 President Santos was not the first to attempt peacemaking with the FARC. On the contrary, his attempt followed the well-known failure at the turn of the century by then President Andrés Pastrana. In an unforgettable moment of political anticlimax, President Pastrana was left waiting on national TV when the FARC did not show up at the negotiation table. For a detailed history of Colombia’s long history of attempts at peacemaking with the country’s insurgencies and paramilitaries see Robert Karl’s recent book, Forgotten Peace (Karl 2017).

5 The last attempt by the government of President Andrés Pastrana had been a colossal failure.

6 In one of the seminal texts of the cultural studies of twenty-first century finance, LiPuma and Lee refer to derivative crises as a particular type of financial catastrophe that is paradigmatic of our present moment, one defined by the globalization of financial circulation (LiPuma and Lee 2004, 3). Drawing from their use of the term, I refer to derivative catastrophe in this chapter to describe a particular type of financial disaster that originates in the derivative form, a contract which also constitutes “the core technical innovation that characterizes contemporary finance.” (Appadurai 2016, 2). Technically speaking, derivatives are a type of contract, however, key to my conceptualization of derivative crisis is the understanding that these are not merely contracts, but rather the vascular force of our current financial regime, one that Randy Martin aptly described in terms of a “derivative logic” (Martin 2010, 359–61).

7 Footnote detailing what type of financial intermediary was Interbolsa.
Enron,” the default was the canary in the coal mine.\(^8\) It sounded the alarms of financial market regulators and the executive branch over the possible implications for the financial market of the bankruptcy of the firm that controlled the largest share of Colombia’s stock market operations. This, however, was only one piece of the story behind the disaster. As I unpack in the following sections, there was a lot more to the collapse of Interbolsa than the default narrative initially presented to the public.

On November 2\(^{nd}\) 2012, one day after the announcement of Interbolsa’s default, dozens of concerned investors anxiously converged in front of the company’s offices, located in the heart of Bogotá’s financial district. Even though the scene of over one hundred people gathered outside the building filled television screens for the duration of the day’s news cycle, they only represented a fraction of Interbolsa’s pool of over 15,000 clients, whose money it was suspected had been siphoned as part of a complex financial scheme.\(^9\) That same day, Colombia’s financial market regulator, Superintendencia Financiera, took control of Interbolsa. Very quickly, Superintendencia’s task force of financial experts interpreted the implications of Interbolsa’s illiquidity as a type of risk that could have effects beyond the company. As the head of the task force told me in 2017, the fall of Interbolsa posed what is known in finance as a “systemic risk,”

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\(^8\) In 2014, an international conference “From Enron to Interbolsa” was held in Medellín (Colombia) featuring Enron’s board member, Frank Savage, in conversation with former board members of Interbolsa as well as top-level officials from Colombia’s financial market regulator (https://www.supersociedades.gov.co/Lists/Export_News/DispForm.aspx?ID=158&ContentTypeId=0x0100D73C6D4CB5F1074F9E06080AD6DE144B consulted on January 11, 2021). The comparison between Enron’s collapse and Interbolsa’s demise introduces an evocative analogy between a local financial intermediary in South America and the corporation that epitomizes the uses (and abuses) of twentieth century derivative finance – the Enron Corporation. Interestingly, this comparative trope also operates against what I call Colombia’s financial exceptionalism – a particular mode of national self-definition centered on the idea of Colombia as marginal to global finance, which I analyze in more detail in the introduction to the dissertation. My intuition is that the idea of a “Colombian Enron” flows from the fact that, similarly to what happened with Enron in the U.S., the damage produced by Interbolsa’s collapse was offloaded onto the thousands of Interbolsa clients that, like the investors in Enron’s shares, counted large numbers of “small savers” among them (Blackburn 2002, 31).

\(^9\) Gloria Valencia, an investigative journalist who wrote one of the most widely read books on the Interbolsa affair, estimated the total losses at US 500 million (Valencia C. 2017).
a type of domino effect that endangered not only Interbolsa’s investors and creditors but also, and crucially, Colombia’s financial system as a whole.

While almost no one remarked the parallelism of peacemaking with the Interbolsa affair, in November 2012 these two major efforts to settle accounts began to unfold side by side. As the process of making peace in Habana began in earnest, the work of adjusting state institutions to settle accounts for over half a century of war called for the reform of, among others, the country’s criminal justice system. In a different realm and relatively autonomous from the institutional reforms for peace, another settling of accounts was also beginning. One that had to do with assessing the effects of “financial turbulence” produced by the Interbolsa scandal and accounting for the dramatic monetary losses that it had created (LiPuma and Lee 2004, 5). Yet, as it often happens in such moments of change, defined by the convergence of processes “which have different origins, are driven by different contradictions, and develop according to their own temporalities,” to most local observers these two scenes of accountability appeared fully detached from one another (Hall and Massey 2010, 57). On the one hand, the judicial accounting in the aftermath of war and, on the other, the accounting for financial catastrophe. This chapter addresses these two processes, peacemaking and financial catastrophe, as the two primary forces that in 2012 came into articulation to produce a “new configuration of the present” – what I call the conjuncture of political transition (Scott 2017, 60). Concretely, the chapter shows how it was that these apparently unrelated processes, on the one hand, a debacle in the country’s financial markets and, on the other, the anticipated transition from war to peace,
aligned to produce a new type of forensic knowledge at the intersection of financial risk analysis and political transition, which I call *forensics of finance*.¹⁰

The chapter is organized in three sections. Part I reconstructs the outset of the conjuncture, laying out in greater detail the scene of derivative catastrophe and its nexus to the moment of political transition.¹¹ Specifically, I show how even though as an event the Interbolsa scandal began in the financial market, its “conditions of existence” involved the promise of political transition and specifically the paradigm of transitional justice (Hall and Massey 2010, 57). Part II shows how the state’s response to the financial scandal produced a financialized mode of forensic knowledge that integrated financial risk as a forensic object. Finally, Part III situates this new forensic regime, which I call “forensics of finance,” in two institutional experiments launched in 2012, one in response to Interbolsa, and another as part of the state’s criminal justice reforms for peacemaking.

¹⁰ The analysis of the conjuncture of transition that follows has two goals in mind. First, to introduce 2012 as the year that marks, conceptually, the beginning of the “present-as-conjuncture” – the conjunctural present – that is the historical object of the dissertation (Hall and Massey 2010, 57). In addition, this chapter introduces the conditions of existence of what I conceptualize as “forensics of finance,” a mode of governing political transition centered on financial risk that is mediated by forensic knowledge. This concept, which is one of the key theoretical interventions of the dissertation, describes a mode of governing political transition – in Colombia’s case from war to peace – that enshrines financial risk as an object of forensic knowledge. Ultimately, the chapter is also an effort to develop a theoretical and political vocabulary to think about politics in relation to financial capital in contemporary Colombia as well as to understand how finance transformed politics at the moment of so-called transition. But what is distinctive about this conjuncture? To answer this question, I have found inspiration in Stuart Hall’s essays written between 1979 and 1988 on the character and significance of Thatcherism, as well as his essays and published interviews following the 2008 financial crisis, which focused on the rise and transformation of neoliberalism. I have read Hall not only as a theorist of the conjuncture but as someone who was committed to analyzing (accounting for) the present with an eye to the possibilities of political action.

¹¹ By “moment of political transition” I refer to that period of time when the idea that negotiation between the state and the FARC could remake the violent political settlement that since the mid-twentieth century had structured the life of the nation called forth the remaking of accountability practices *in preparation* for peace.
2. Financial Catastrophe

A few days after Vladdo’s tweet had been the harbinger of Interbolsa’s collapse, the cartoonist published this image in Semana, Colombia’s best-known and widely read weekly magazine. Interbolsa, represented as a sinking ship “for sale” evoked – not without irony – a sense of crisis. But “what sort of crisis is this?” (Hall 2011, 705) and “how exactly did we know that we were in fact in a crisis? (Elyachar 2013, 148). These questions, formulated by Stuart Hall and Julia Elyachar in the aftermath of the financial crisis of 2007-2009, belong to the same global financial conjuncture that opens this chapter – they were formulated one year before and one year after Interbolsa’s collapse. Crucially, they also work to suspend the assumption that Colombian publics already knew the meaning of crisis in general or of this one in particular.\(^\text{12}\)

\(^{12}\) They also call for a reconsideration of what constitutes the concept of financial crisis, a question that other anthropologists have recently expanded to inquire on the history and transformation of the concept of crisis Joe Masco and others (Elyachar 2013; Roitman 2014; Masco 2017).
What was at stake in the crisis set forth by the collapse of Colombia’s largest brokerage firm? In Colombia, government, financial regulators, and other economic experts were quick to interpret the events falling back on the well-known mix of economic determinism and corruption discourse. It was their reasoning that the mass embezzlement scheme resulted from the moral failure of greedy investment bankers who should be punished. In their view, this crisis started and ended in the economic sphere. It was, they said, a matter of avoiding “systemic financial risk.” Meanwhile, in the public sphere, the frame that quickly gained traction downplayed the financial nature of the scandal, instead framing the events drawing from the more familiar morality tale of greed and corruption – the same one that in the U.S. and across the globe constantly translates crisis into the idioms associated with economic malfeasance and financial misbehavior.13

The concept of “systemic financial risk,” which became popular currency following the 2007-2009 subprime mortgage crisis, is crucial to understanding what Colombia’s financial market regulator, as first responder to the events of November 1, 2012, understood to be the stakes of Interbolsa’s default. While the notion of system-wide risk is not exclusive to the world of finance, in finance, “systemic risk has traditionally referred to the possibility that a loss incurred at one banking institution could propagate outwards, unleashing a chain of events through which the financial system as a whole would fail” 2/19/21 10:48:00 AM. However, there is a key distinction to be made when describing this outward effect produced by financial loss.

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13 The framing of the Interbolsa affair as a corruption scandal, rather than a financial phenomenon, was not merely incidental but rather illustrative of a longstanding history of Colombia self-describing as a state that exists in the margins of global finance. A marginal position that, rather counterfactually, is seen by many local experts, including some of the country’s foremost economic analysts, as working out advantageously for the country’s economy when it comes to dealing with the blows of global financial disasters. Take for instance the 1982 sovereign debt crisis, or the 2008 mortgage bubble, two instances when historians of Colombian finance have claimed that the country’s economy was only minimally impacted. In sum, Colombia sees itself as a marginal, yet privileged, actor, of the global financial system.
As Martha Poon writes, there is a difference between systemic risk and the often times overwhelming losses that can accompany speculative financial activity. While the latter are understood as inherent or as “natural parts of what is at stake in financial activity,” systemic risk “is concerned with the catastrophic loss of functioning in the system of finance itself, thought to be triggered by an event occurring within a single firm.”

Following Poon’s definition, one could say that while financial systems account for the possibility of “dramatic” monetary loss, the difference between loss and catastrophe – or what Randy Martin calls the difference between “the bad and the merely ugly” (Martin 2010, 357) – is not only a matter of degree. Rather, it seems that inherent to finance is the view that the difference between the bad and the ugly is defined by a third concept – catastrophe – and as such, financial catastrophe constitutes an altogether distinct phenomenon linked to the potential collapse of a financial system.15

The initial public statements and actions of Colombia’s financial regulator sat squarely within this understanding of systemic financial risk and the accompanying concept of financial catastrophe – Interbolsa was, from their perspective, an event of catastrophic import (El Espectador 2012).16 But they were not alone in holding this view. On November 3rd, only twenty-four hours after the financial regulator announced its decision to take control of the firm, Colombia’s Secretary of the Treasury, Santiago Cárdenas, ordered Interbolsa’s liquidation. The almost hasty move from intervention to liquidation made before any official inquests into the case had begun, reflects the government’s assessment of the likelihood that Interbolsa’s default

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14 Emphasis is mine.
15 Footnote on LiPuma and Lee’s use of the concept of financial catastrophe
16 President Santos explicitly alluded to systemic risk in one of his public statements following the events of November 1 and 2, 2012. "El hecho de que la primera firma comisionista haya tenido problemas, problemas de iliquidez, y la forma como se fue interviniendo el mercado para evitar el contagio, para evitar que ese problema se traduzca en un problema sistémico, es una demostración de cómo se actuó correctamente" (El Espectador 2012)
on the multi-million dollar loan could have a domino effect on the country’s financial system.\footnote{As the Secretary of the Treasury told Reuters, “[t]his is the best form of protecting the interests of Colombia’s financial market.” (Murphy and Bocanegra 2012b). (was it publicly celebrated?)}

Accordingly, and similar to the response to the 2007-2009 global financial crisis, the impressive succession of rescue interventions that followed had one goal in mind: “to rescue the banking and financial system” (Marazzi 2010, 9).\footnote{Yet, as Christian Marazzi points out, the “most devastating effects” of the crisis continued to expand after the rescue, with “its most devastating effects on employment, wages, and retirement. On the bare life of entire populations.” (Marazzi 2010, 10)} In less than three days government institutions intervened and liquidated Colombia’s largest financial intermediary, all while also reaching an agreement with the country’s largest bank – a type of bailout, in which the latter agreed to take over Interbolsa’s local treasury bond portfolio, averting what the government saw as one of the most immediate risks for the country’s financial system (\textit{Reuters 2012}).\footnote{Given that stable treasury bonds provide the most liquidity to a national financial system, the regulator sought the agreement with the understanding that the bond portfolio had to be protected in order to prevent systemic financial risk or, in other words, to avoid financial collapse.}

Over the next few months, the liquidation was followed by a series of administrative inquiries revealing that behind the default lay a mass embezzlement scheme involving close to 500 million dollars belonging to thousands of Interbolsa’s 20,000 clients.\footnote{Interbolsa’s vast client portfolio included a diverse array of social actors, revealing the extent to which investment in financial markets had gained prominence in Colombia as an alternative to traditional savings banking and alongside other types of investments such as real estate. The diversity and reach of Interbolsa’s client portfolio also meant that the effects of the embezzlement and subsequent collapse were felt by very different types of market actors, from corporations and non-profit organizations (including religious congregations as well as universities) to individual investors that ranged between wealthy players in the stock markets and ordinary retired workers who had trusted their entire savings to the highly reputed firm.} As a press article summed up the situation, “what originally seemed like just a case of poor investment choices and excessive ambition” soon evolved “into one of the biggest financial scandals in recent Colombian history” (\textit{Edling 2012}).

At the same time, it appears that the financial regulator’s framework for interpreting financial catastrophe remained bound to a traditional and anachronistic institutional model of
financial action and regulation. One premised on a formalistic understanding of finance as “the realm of banking institutions” (Hart and Ortiz 2008, 2). What this model did not take fully into account is that, as Poon writes, the rise of global capital markets complicates the concept of financial systemic risk. As she elaborates:

“The rise of global capital markets, however, complicates this picture. Within capital markets the number of actors at play proliferates to include alternative institutional intermediaries, financial instruments and transactional ties that fall outside of banking relationships. The nature of the system that is at risk becomes much more amorphous once its components are not limited to a discreet category of agents such as banks. The domino effect is overwhelming evidence of profound interconnectedness within capital markets. By the same token, however, the freeze [post 2007-2009 financial crisis] has made systemic risk the object of regulatory scrutiny at precisely the moment when it is most difficult to map out the markets’ heterogeneous parts.” (Poon 2011)

Poon’s diagnoses lucidly captures the dilemma faced by the forensic apparatus of the state in the aftermath of Interbolsa’s financial catastrophe. If forensics is meant to be the science of criminal detection that arrives after the fact, then “the nature of the system that is at risk” has to constitute a reliable forensic fact. However, systemic risk does not constitute an object of forensic knowledge outside the moment of crisis. Indeed, even though Colombia’s financial regulator quickly diagnosed the problem as a crisis, at the time they did so there was very little knowledge of its source(s) as well as the system’s components. This epistemic situation challenged the coordinates of forensic knowledge. Against this disjuncture, the promise of political transition provided an alternative mode of anchoring the state-led effort to corral the threat of financial crisis while displacing how Interbolsa’s significance as “a violent crisis, of a

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21 This can be said at least from what is known about the rationale for their actions.

22 I read Poon as a diagnostician of the concept of systemic risk pre- and post-bubble in order to bring to the foreground a unique epistemic condition of financial catastrophe. That is, the fact that systemic risk becomes the object of forensic scrutiny at precisely the moment when it is most difficult to map out what constituted the “system” in the first place. As Poon notes, the contemporary concept of systemic financial risk entails “a relationship between ‘system’ and ‘risk’ that is significantly different from the one described by the traditional institution-based model of financial action and financial regulation.” Even though she is not explicit about it here, Poon is bringing to our attention the fact that there was a pre-“housing bubble” model of financial systemic risk that failed [this sentence is missing something].
violent finance” (Marazzi 2010, 10). As the following section shows, the state’s response to the threat of systemic financial risk made legible an already existing level of articulation between the logic of finance and the project of political transition that had largely remain implicit in the discourse of peacemaking.

3. The Finance/Transition Nexus

Less than three weeks after Interbolsa’s liquidation, official peace negotiations began between the Colombian government and FARC rebels began in Habana. Meanwhile, Colombian President Juan Manuel Santos, who would go on to win the Nobel Peace Prize in 2016 for successfully bringing the negotiations to term, was unable to ignore the attention given by the news cycle to the Interbolsa affair. On November 15, only four days before his trip to Cuba to launch peace talks, Santos made a statement while on a state visit to Portugal. During a press conference he declared that the government had “done the right thing” by liquidating Interbolsa in order to avoid a “systemic problem” (Dinero 2012). His confidence seemed unflappable then as well as in an earlier public comment, when he had emphasized that Interbolsa’s “poor decision-making and bad cash-flow management” would not “affect the safety of Colombian investments and other brokerages” (Murphy and Bocanegra 2012a).

The President’s comments from those early days in November addressed in no ambiguous terms the financial promise of political transition. Yet, contrary to what many

23 The financial promise of political transition did not simply emerge then. The rhetoric of peace as a vehicle for capital was part and parcel of the justifications given by Santos, as well as other key national actors, for peacemaking. My claim in this regard is that the Interbolsa affair constitutes an understudied moment in the long trajectory of articulation of peace and capital. As the rest of the chapter shows, what is distinctive about this instance of the process, is how it brings forth an alignment between peacemaking and finance mediated by forensic knowledge.
expected, his audience was not the pool of several thousand Interbolsa clients whose money had disappeared, but rather, the national and foreign investors who had read the financial market’s negative reaction following Interbolsa’s liquidation as a sign of financial instability. His strategy was unequivocal, to assuage them by emphasizing that the government had effectively corralled the effects of financial misbehavior and averted systemic risk.

While this was certainly not the first time that Santos addressed the nexus between the health of Colombia’s economy and political transition, Santos’ early November statements constitute the first moment of articulation of the Interbolsa affair as a financial event relevant for his vision for a negotiated political transition. Contrary to the “chaos of appearances” of the government’s discourse in the immediate aftermath of the financial scandal, which presented financial catastrophe and peacemaking as siloed concerns, there were very good reasons to believe that within the Santos administration there was real preoccupation regarding the implications for political transition of the Interbolsa affair. Ultimately, the Interbolsa affair pushed the president to specify a nexus between finance and transition, a term that unlike “the market” and “the economy until then appeared to possess greater autonomy from the project of peacemaking.

To understand the context and significance of Santos’ statement it is helpful to bear in mind that in 2012 the world of global finance considered Colombia to be “one of the hottest investment stories in recent years.” To begin, that year foreign direct investment was expected to reach a record 17 billion Colombian pesos, primarily in the oil and mining sectors, an astronomic increase from the 2 billion received in foreign investment a decade earlier.

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24 Notably, Alberto Donadío points out that Santos never directly addressed or asked for justice for “the retired, the widows, the small investors, or the big ones, who cannot recover the money that they gave to the main financial broker in Colombia’s stock market.” (Donadio 2013, 171)
25 Footnote elaborating on these reasons.
26 This, however, was only in appearance. As I show in Chapter II, one of the defining features of Colombia’s counterinsurgent wars is the emergence of insurgent finance as an object of forensic knowledge.
during some of the most intense years of the war (Reuters 2019). As a result, during that same period Colombia’s equities market had taken off “on the back of greater political stability, economic growth and foreign investment.” (Yuk 2012). But not only that. By 2012 the promise of ending a war that had been understood to stand in the way of foreign investment had already helped Colombia’s equities markets to rise steadily (Murphy and Bocanegra 2012). It was also during this period that Colombia developed its derivative market which, although relatively smaller than those of other Latin American countries, reflected the overall expansion of Colombia’s play within the global financial system (Vargas and Varela 2009).

On his end Santos, a right-of-center President who as Secretary of Defense had accomplished many of the military victories that set the stage for peace negotiations with the FARC, was also banking, if I may allow myself the pun, on the anticipatory logic of finance. This logic, by relying on half a century of risk analysis developments since the Black-Scholes breakthrough, already created value from a future political transition. As a result, even though the final peace agreement would not be signed for five years, in 2012 Colombia’s financial risk profile had already been upgraded, and consequently so had been the country’s creditworthiness. These upgrades would enable Santos to successfully begin in 2013 Colombia’s accession into the Organization for Economic Cooperation and Development (OECD) – a process that had until then seemed unthinkable for a “war-torn,” “violence-ridden,” often dubbed “failed state.” By joining the OECD, Colombia became part of an elite group of thirty-seven countries who operate

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27 Footnote on 2005 birth of Colombia’s derivative market. (Arias-Barrera 2017a; 2017b; 2018). Another reason that helps explain the absence of a public narrative that sought to understand Interbolsa’s as a derivative crisis is linked to the fact that Colombia’s domestic derivative market is small, and its operations considered to be of minor significance. To be clear, compared to other Latin American countries, Colombia’s derivative market is indeed small due both to regulatory restrictions as well as “inadequate accounting rules for non-financial corporations and lack of expertise in the valuation of derivative products” (Vargas and Varela 2009, 44). This, however, has not prevented well-known phenomena associated with derivative markets from occurring, such as pension fund managers “exploiting arbitrage opportunities in interest rate differentials through forward operations with commercial banks.” (source?)

28 Footnote elaborating on risk analysis (use lines from Swarthmore talk).
as the primary global brokers of national risk metrics. All these facts pointed in one direction: the promise of political transition enabled finance in very concrete ways.

President Santos’ response to the Interbolsa debacle made legible how the temporality of political transition – the idea that in the future Colombia would achieve peace and hold those accountable for a 50-year long war – enabled the logic of financial speculation. It was precisely because the President understood, at least to some extent, the conditions of this temporal alignment, that when referring to the effects of financial catastrophe his emphasis was not on the effects of Interbolsa’s recklessness but on the unchanged temporality of transition for financial speculation. In his reasoning, the value that could be accrued in the financial markets as if peace had already been achieved, would not be disturbed by the collapse of the firm.

Yet, the 2012 conjuncture also made legible another level of articulation between finance and political transition, one that rests on the possibilities of alignment between financial temporality and “transitional justice.” Described as “the conception of justice associated with periods of political change” transitional justice is a concept used to describe a legal discourse and mode of governing political transitions that first emerged in the 1980s and that came into ascendance in the aftermath of the Cold War (Teitel 2003, 69). Simultaneously a pragmatic discourse of accountability and a powerful vehicle for the ascent of liberal democracy as the primary horizon of political transformation in the West after 1989, transitional justice is a

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29 The OECD is a multilateral body that produces regulatory regimes through “the creation and dissemination of standards and best practices, and through a procedure of peer monitoring and review.” (Maurer 2008, 164) All the more striking is that Colombia, the country with the longest civil war history in the region, is only the third country, after Mexico and Chile, to join the OECD. See, https://www.oecd.org/newsroom/global-oecd-welcomes-colombia-as-its-37th-member.htm (Accessed December 18, 2020).

30 Particularly volatility, which is, according to Meister, “a function of the future risks and whether at some point something will have been seen as having happened.”
category that intersects with key concepts in the normative lexicon of liberalism – including humanitarianism, human rights, and the rule of law.\textsuperscript{31}

At its most pragmatic transitional justice is a widely diffused (and diffuse) ensemble of legal institutions, norms, and methods established by the state to provide accountability for the atrocities of “authoritarian” or “anti-democratic” political regimes in order to enable political transformation.\textsuperscript{32} More specifically, transitional justice can also be described as an assemblage of legal technologies, legal knowledge, institutions and practices whose self-described goal is to account for past injustices through criminal prosecutions, truth-telling, reparations, and institutional reform in order to enable social reconciliation, democratization, and the rule of law.\textsuperscript{33} More recently, however, “the term has been defined in a broader manner… and extended to encompass a larger set of outcomes, such as advancing development and social justice” (Hinton 2010, 2).\textsuperscript{34} Increasingly, while the notion of transition “implied a teleological movement from authoritarian rule towards a liberal democracy inserted in today’s global capitalism,” in practice the “transition paradigm is now applied to many other historical experiences that are not necessarily described as post-authoritarian” (Castillejo-Cuéllar 2013, 17). In this sense

\textsuperscript{31} In the introduction to the dissertation, I address in greater detail the relation of transitional justice to liberal governance. Eric Posner and Adrian Vermeule’s 2004 article in the Harvard Law Review perfectly illustrates the concept of transitional justice as a universal in the sense described by Trouillot: “In the wake of the revolutions in Eastern Europe, the democratization of South Africa, and the ever-increasing popularity of international human rights talk, an academic literature has arisen (or at least greatly expanded) that examines regime transitions in developing nations.”

\textsuperscript{32} As I elaborate in this section, over time “the basic question” expanded beyond the teleology of transition to “that of how to reckon with massive past crimes and abuses (either by the state or by the armed opposition)” (Hayner 2011).

\textsuperscript{33} As Vasuki Nesiah writes, “practitioners and scholars” often refer to “prosecutions, truth commissions (TRCs), reparations, institutional reform, and reconciliation initiatives” as the “pillars of transitional justice.” These, writes Nesiah “are the established institutional avenues that structure and shape the conceptual imagination of the field, and ground its normative vision through institutions and practices.” (Nesiah 2006, 800)

\textsuperscript{34} In this regard it is instructive to note that critics of transitional justice have compellingly argued how political economy is treated as external to transitional justice (cite Zinaida Miller, Olarte/Franski). (Miller 2008) “To date” writes Ruben Carranza, a researcher at the International Center for Transitional Justice, “transitional justice has largely compartmentalized legacies of abuse into those based on a narrow set of human rights violations and those based on economic crimes, which the author argues is an inadequate way to address both sets of abuses.”
transitional justice has become its own version of a “North Atlantic Universal,” an undisputed paradigm for articulating the relation of justice and the political transformation of states outside the West (Trouillot 2002; 2003).

Perhaps no other region in the world offers a more prolific site of ongoing experimentation with the paradigm of transitionalism than Latin America. Yet, in Colombia the trajectory of this model is unique in more than one way. Partly because of the multiple temporalities of war-waging and peacemaking as well as the diversity of actors involved in the war – including, paramilitary forces, insurgent guerrilla armies, and the state’s military forces – Colombia’s engagement with transitional justice both precedes and greatly exceeds the peace process that officially began in 2012. Since at least 2004, when Colombia began an effort to demobilize the country’s powerful paramilitary armies, Colombia has been knee-deep in the elusive promise of peace and reconciliation offered by transitional justice “in the context of ongoing conflict and incomplete peace negotiations.” So much so, that analysts have conceptualized “transitional justice without transition,” (Uprimmy Yepes et al. 2006) “transitional justice before transition,” (Skaar, Garcia-Godos, and Collins 2016) and, more recently the “shadow of the post-conflict,” to articulate the unique temporality of transitionalism.

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35 As Priscilla Hayner points out “[t]he 1986 publication of Transitions from Authoritarian Rule, a major four-volume work focused on Latin America and Eastern Europe, helped to define the terms of a still-new field, that of studying how (and under what constraints) democratic transitions take shape after a period of repressive rule” (Hayner 2011). Emphasis is mine. Crucially, in 1986 one of the first institutions that would be retrospectively described as part of a transitional justice legal architecture, the National Commission on the Disappeared in Argentina, was just getting underway. In the last five years academic writing theorizing Latin America as a region through the lens of transitional justice has proliferated (Schneider and Esparza 2015; Brunnegger and Faulk 2016; Skaar, Garcia-Godos, and Collins 2016; Villalón 2017; Carmody 2018)

36 See Nelson Sánchez, Jemima García-Godos, Catalina Vallejo “Colombia: Transitional Justice before Transition” in (Skaar, Garcia-Godos, and Collins 2016)

37 See Nelson Sánchez, Jemima García-Godos, Catalina Vallejo “Colombia: Transitional Justice before Transition” in (Skaar, Garcia-Godos, and Collins 2016)
in Colombia, in which “transition to peace that is forever deferred into the future” (Morris 2019, 581–82).38

Less remarked, however, is the extent to which this suspended animation between war and peace does not result exclusively from the specific trajectory of Colombian transitionalism, but is rather lodged in the paradoxical temporal structure of transitional justice per se. Indeed, transitional justice constitutes a model legal and political accountability for the aftermath of authoritarianism or humanitarian catastrophe meant to allow a society to move on, ideally toward liberal democracy and the rule of law, on one condition. That the victims of atrocity – as representatives of the social body – put their grievances squarely in the past (Meister 2010; Scott 2013; Castillejo-Cuéllar 2013; 2014). This sweeping demand for historical reconciliation creates an unavoidable tension between “the desire to bury the past, in order to avoid provoking the ire of powerful wrongdoers, and the ethical and political demand to confront the crimes of the prior regime” (Hayner 2011, 7). Accordingly, the “reconciled victims” will obtain recognition of the harms endured – often in the form legal punishment for the perpetrators and reparations for the victims – on the condition that they accept the pastness of evil (Meister 2010). From this logical structure follows the paradox; that those who have endured the greatest forms of violence must permanently relinquish the option of holding onto their grievances – either moral or political – against the systems and institutions that are implicated in their injuries even when these – or parts of these – endure after transition (Meister 2010; 2020).39

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38 As Meghan Morris writes, this unique temporal structure is the result of “a suspension between conflict and post-conflict that has become the pervasive condition of a country attempting for decades to make peace in the middle of war” (Morris 2019, 581).

39 The same is expected vis-à-vis those that continue to benefit from the violence of war-making — such as is the case of national and transnational corporations.
Moreover, from the structure of redress just described follows a theory of justice/formation of liberal justice that has been aptly described as being organized around the *deferral* of justice (Meister 2010). Specifically, transitional justice creates a time between times—“after evil and before justice”—during which the cumulative effects of slow violence and slow death that entwine war-making, on the one hand, with capital, colonial, and liberal violence, on the other, must be dissociated. It is precisely in the abandonment of a robust concept of “historical injury” demanded by this intertemporal structure that lies the potential for an alignment between transitional justice and financial temporality.40 One way to unpack this dilemma is by considering how both transitional justice and finance constitute social technologies of “legally produced time” (Chowdhury 2020). From this perspective—and particularly given global transitionalism’s refusal to maintain the option of historical justice on the table—transitional justice becomes part of the socio-technical machinery through which wealth is held and accumulated independently from the question of “historical injury” (Castillejo-Cuéllar 2014).

The immediate aftermath of the Interbolsa affair that I describe in this chapter revealed how transitional justice and finance could work to mutually reinforce each other’s temporal logics. On the one hand, finance, with its potential to calculate, manage, and reduce risk, enabled a type of futurity to be built into the present, all while accentuating transitionalism’s demand to

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40 My approach to financial temporality is grounded both in cultural studies of finance as well as in recent efforts to think the logic of finance in/from Latin America and the Caribbean that seek to move from an economic to a historical understanding of finance. In this regard I am following the work of Rocio Zambrana on history as debt (Zambrana 2018a) and Verónica Gago’s work on neoliberal reason in Argentina (V. Gago 2015; Verónica Gago 2017). Paraphrasing Zambrana’s writing on debt in Puerto Rico, the move to write about the history of Colombia’s political transition as finance that I propose in this chapter requires tracking the history of finance (in relation to horizons of political transformation) while, at the same time, dismantling the understanding of history as finance. However, as I elaborate in the introduction to the dissertation and expand in Chapter Three as part of my analysis of Colombia’s recent “anti-corruption wars”, to dismantle history as finance we must first examine the operations by which finance institutes itself as history (Zambrana 2018a, 99, see also 2018b). This is precisely the task that I set out for myself in this chapter.
live “as though everything had already changed” (Meister 2010). If the dictum of transitional justice is that historical experience must be resolved as past, then finance both feeds from and intensifies this temporal disjuncture by folding the future into the “long aftermath” of war (after evil and before justice). On the other end, transitional justice does not only work as an ideology that persuades people to wait for justice, but also one that “buys more time” (Meister 2010, 13). Ultimately, as I elaborate in the following chapters, transitional justice works to buy finance more time before justice. While not identical operations, buying time and deferring judgment both help institute a horizon of justice that rather than aspirational, radical or revolutionary is defined by accommodation, compromise, and settlement (Scott 2013).

Critical to Interbolsa’s financial catastrophe is how the temporality of finance enabled a type of futurity to be built into the present through anticipatory knowledge. But not only that. In the aftermath of the Interbolsa scandal two social technologies of time, on the one hand finance’s anticipatory knowledge and, on the other, transitional justice, converged to produce what I conceptualize as forensics of finance. As the next section shows, this alignment was not simply predetermined. In 2012 the promise of structural political transformation and the aftermath of financial catastrophe came into alignment under the pressure of events that were relatively removed from the site of catastrophe. At the heart of these was forensic knowledge and what I call the “forensic power” of the state. The simultaneous reckoning with the country’s first “derivative crisis” and the sweeping reform to Colombia’s prosecutorial apparatus in preparation for the signature of a peace agreement was about to make forensic knowledge the locus of a new type of “financial conjuring” (Tsing, Friction 59).
Part II

The (Second) Conjuncture

Whatever influence we attach to the many economic circumstances surrounding the 2007–2009 economic crisis, we must not forget where precisely it started, that is, in the market for residential mortgage-backed securities (MBSs). At the very source of the crisis were two interrelated markets: the market for residential houses and the market for mortgage loans on these houses. This is, as it were, the crime scene, and we can’t hope to find the culprit if we don’t visit it.

Lemieux 2011

1. The “Crime Scene” of Crisis

As the lines of desperate Interbolsa clients demanding answers grew into impromptu protests outside Interbolsa’s headquarters, the state’s forensic experts began to make their appearance at the site, which they had designated as the scene of the crime. First to arrive were the experts working for the financial market regulator. Imagine them as a team of forensic first responders; their job was to gather evidence of potential irregularities in the ordinary conduct of financial intermediation and seize all possible assets to prevent further siphoning of money from Interbolsa’s clients. To be clear, these were not criminal investigators, but experts in forensic accounting, a field that combines criminal investigation with financial auditing to identify financial misbehavior.41 As a set of experts, Superintendencia Financiera’s first responders

41 Also known as “financial forensics,” forensic accounting is a field of expertise that first emerged within corporations and financial institutions, but only later developed as a state form of forensic knowledge. For a critical sociology of forensic accounting and the relation of accounting with finance more broadly see, Michael Power’s work (Power 1994; 2005; 2012).
belonged squarely within the realm of what anthropologists have defined as “audit culture” (Strathern 1996; Shore and Wright 1999).

Criminal investigators and prosecutors working for the National Office of the Attorney General (Fiscalía General de la Nación) only arrived later. As the head of Superintendencia’s forensic task force told me, when prosecutors arrived, they mostly stood by without knowing exactly where to start a criminal inquiry. The reason, he explained, was simple: they were not familiar with the financial instruments that had produced the Interbolsa debacle in the first place. In 2018, six years after the Interbolsa scandal broke, that same financial expert told this story during a public talk before an audience of experts in financial crime. He made them break into laughter when he narrated how, upon arriving at Interbolsa in 2012, the state criminal investigators had asked, ¿dónde están los títulos? – where are the titles?42

The story playfully ridiculed the fact that prosecutors assigned to investigate Interbolsa’s crimes did not understand how finance worked.43 Yet, the tale’s broader goal – to demonstrate a clear break in financial forensic knowledge before and after Interbolsa – relied on overstressing the extent to which financial intermediation leaves no “material” traces. This claim, however, belies the extent to which finance constitutes an intensely material social phenomenon (cite Riles, McKenzie in de Goede). In order to make a point about the undeniable growth of financial forensic expertise within the prosecutorial apparatus since 2012, the account also downplayed

42 It is no trivial matter that the prosecutors were wondering about the material representation of “titles.” As Annelise Riles points out, there is a whole ideology of modernization through titling that rather than outmoded, as my interlocutor here suggested, is particularly crucial in the age of derivative crises. One of the key figures of this global discourse around property titles in the context of derivative markets is Fernando de Soto, who has argued that “financial crises could be avoided… if there were greater ‘transparency’ in property rights in the derivatives markets – if title were more clearly recorded and collateral rights were more secure.” (Riles 2011, 6).

43 This account is not just the product of exaggeration. Since 2017 I have heard numerous variations of this story: prosecutors describing the experience of finding themselves at a complete loss as they tried to make sense of Interbolsa’s fraudulent financial operations, or instead, financial forensic experts working for the market regulator recounting the hours spent in conference rooms explaining to criminal investigators the operations of the financial derivatives market. These ethnographic accounts are an important part of the origins story of forensics of finance.
the fact that many prosecutors and criminal detectives were familiar with the ins and outs of
digital evidence in the context of criminal investigations. After all, this was by no means the first
large scale financial scandal faced by Fiscalía since its establishment in the mid-nineties.

At the heart of this story there was a hardly implicit claim to superiority of financial
expertise over the conventional “conjectural methods” of ordinary detectives (Ginzburg and
Davin 1980). That the financial forensic experts would make this argument is not at all
surprising. But while the lack of financial expertise partly explains the disorientation of criminal
investigators upon arriving at the firm’s headquarters, there appears to be more to their lack of
orientation than what this account seems to suggest. Crucially, also at stake in the prosecutors’
response was the lack of alignment between the concept of the “crime scene” and financial
catastrophe. While Superintendencia’s financial forensic experts were overly confident regarding
their designation of Interbolsa’s headquarters as the scene of the crime, their colleagues at
Fiscalía seemed more hesitant. Their original question regarding the material inscription of titles
also invokes the instability of the coordinates of forensic knowledge. At the very least, their
disorientation raises an additional question – what constitutes the crime scene of financial
catastrophe?

In his book on the 2007-2009 financial crisis, Canadian economist Pierre Lemieux sought
to address this issue. Lemieux claimed that “the crime scene” of the crisis had been “the market
for residential mortgage-backed securities (MBSs).” To which he then added a caveat which
somehow seemed to contradict his conviction regarding the unequivocal singularity of the crime
scene of the crisis. The crime scene, he went on to say, encompassed not one but “two
interrelated markets.”44 On the one hand, the market for residential real estate and, on the other,

44 Emphasis is mine.
the market for mortgage loans on those properties. “This is, as it were, the crime scene” he wrote; quipping that “we can’t hope to find the culprit if we don’t visit it.” (Lemieux 2011, 103).

Similar many other books written by economists and financial experts in the years following the global financial crisis, Lemieux’s offers his version of the truth revealed by returning to the true crime scene of financial crisis.

“The return to the crime scene,” writes Michael Seltzer, is one of the premises of “forensic realism” (Seltzer 2007, 3). Driven by the development of photography, as Walter Benjamin already noted in the first decades of the twentieth century, in the modernist canon the crime scene usually conjures up images driven by spatial coordinates (Benjamin and Jennings 2010). From the contour of a body traced in white chalk on the street’s asphal ted surface, to a spatial border defined by a strip of yellow crime-scene tape—the concept of the crime scene relies on a certain degree of spatial unity. And even while today’s crime scenes appear to have dramatically changed – just think of representations in television shows such as CSI or Black Mirror – the notion of a time-space unit that can be referred to as the scene remains at the core of contemporary modes of crime-telling, both in courts and fiction.

The reconstruction of the so-called “scene” of a crime is also at the heart of forensics, the science of criminal identification that Carlo Ginzburg famously described as an episteme grounded on a “conjectural method” (Ginzburg and Davin 1980). Constructed backwards –

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45 Explain my use of Seltzer’s concept.
46 Copy Grey Room article footnote.
47 In Ginzburg’s analysis the rise of forensics (a science for the identification of the criminal through the analysis of clues) has both deep roots and a modern history. In the longue durée forensics is linked to an epistemic paradigm (conjectural/divinatory) that privileges the individual as its object of analysis and from the analysis of particular instances draws conclusions about the whole. As a modern science, forensics is tied with the rise of the European nation-state and bourgeois civil society, here it is linked to modes of expropriation of knowledge enabled by the rise of private property, but also with the criminalization of the working classes. More immediately, argues Ginzburg, the rise of criminal justice as a dominant site for the legitimation of the conjectural model came hand in hand with the
thus always (re)constructed – the scene of the crime is supposedly put together by the detective in the aftermath of a criminal act, “beginning with the consequences and then reconstructing the scene of the crime simultaneously – as a pattern rather than a linear narrative” (Coley 2017).

Without this techno-juridical procedure, which infers causes from their effects (Ginzburg and Davin 1980, 23), the scene of the crime remains, as Alison Young writes, meaningless. (Young 1996)

A financial catastrophe, however, presents a challenge to this particular premise of forensic realism and to the scene of the crime as the epistemic corollary of criminal discovery. Consider for instance the designation of “the market,” or instead of two markets, as the scene of a crime – as in Lemieux’s analysis of the 2007-2009 financial crisis. While it might work as a metaphor, the idea of an abstraction of political economy such “the market” appears antithetical to the singularity and spatial unity that is a premise to the forensic practice of “crime scene investigation.” Their initial confusion upon arriving at the company’s headquarters had to do with the fact that the concept of financial crisis defied the very idea of a “scene” as the locus of the crimes to be uncovered. In the case of Interbolsa the very notion of systemic risk championed by Superintendencia’s experts offered a counterfactual to the boundedness expected from the forensic scene – if nothing else, it put enormous pressure on the idea that a crime could be located in a singular place. Indeed, from the perspective of forensic realism something appears amiss once the scene becomes dislocated, or, going back to the disoriented prosecutors, once there is no actual place where to find property titles. By failing to conform to the presumed development of techniques, first, for the identification of criminals, and later with their expansion to the control of populations.

In the dissertation I argue that forensics has not always been the science of crime, in fact it existed first as the rhetorical practice of persuasion in a public forum and particularly that which involves the use of objects as evidence (Weizman 2010; Keenan and Weizman 2012). In this broader sense forensics can be understood as a particular mode of knowledge centered on the possibility of making claims legible in public.
spatial coordinates of the crime scene – and their sacrosanct unity – Interbolsa challenged forensic realism, all while intensifying its temporal coordinates.  

Ultimately, the instability of the crime scene as an orienting device of legal accountability was symptomatic of a broader anxiety in relation to forensic knowledge that was taking shape in Colombia around that time. The Interbolsa affair challenged the possibility – as well as the desirability – of seeking legal accountability through the epistemic conventions of forensic realism. In this sense one can read in the disorientation of the inexperienced prosecutors, as well as in the rushed designation of the crime scene by the financial experts a shared lack, not of expertise but rather of a reliable knowledge object that would effectively serve as the coordinate for the two primary axes of criminal detection, “crime” and “criminal.”

Yet, while the financial forensic experts’ claim to greater and better knowledge implicitly emphasized the newness of the crime scene, the disorientation of their counterparts – the ordinary detectives – pointed in a different direction. As the conventional detectives saw it, this scene did not conform with what they understood to be the premises of forensic realism. Indeed, from the perspective of the ordinary detective the misalignment between their forensic knowledge and the situation they now found themselves in was not just a matter of more or better expertise. Part of what was at stake for them was a mode of forensic knowledge that they experienced increasingly unmoored from the traditional organizing devices that grounded forensic epistemology – including the self-fashioning of forensics as a science of the aftermath, as well as the certainty of its final object being the individualization of criminal acts and criminals.

48 Unsurprisingly, it is almost impossible to find any images of the actual Interbolsa crime scene. Instead, the press, both national and global, used old archival photos from stock markets elsewhere to represent it.
But it was not just forensic realism that was destabilized. The misalignment of old-school criminal detection and financial catastrophe suggests a greater epistemic dislocation between finance and forensic knowledge. Finance and its sibling concept of financial catastrophe challenge received notions of what constitutes forensic knowledge. With its knack for abstraction and its compression of time and space, finance challenges forensic reasoning and particularly its commitment to the individualization of criminal liability. Interbolsa’s criminality did not only stem from the misuse of financial instruments but also, and crucially, from the use of what Robin Blackburn calls “financialized techniques” – indeed, the mass-embezzlement was the result of sophisticated financial engineering and methods as opposed to just being about fraud, a trope that dominated the public narrative of the case (Blackburn 2006). These techniques involved, on the one hand, the powerful digital knowledge used by financial intermediaries and, on the other, the heavily anonymized mediations that produce complex financial operations, such as repurchase agreements. As the following sections show, the forensic expertise called forth by Interbolsa’s collapse was not autonomous from these financialized techniques and in this sense was not external to finance. Yet, this mode of knowledge that resulted from the recursive relation between finance and forensics did not spring fully formed into existence in 2012. Rather, one can read in the arrival of both financial experts and common detectives at the company’s headquarters the moment of the not-yet-fully oiled articulation of a financialized mode of forensic knowledge.

49 Here I am using wording from Robin Blackburn’s “Finance and the Fourth Dimension” (Blackburn 2006)
50 There is more than one definition of financialization that is relevant here. On the one hand, those that emphasize financialization as a totalizing condition that defines capitalism today (Martin 2010; Poon 2012; Meister 2020) and, on the other, those that point at the distinct mechanisms through which financialization operates (Marazzi 2010; Appadurai 2016). Among the latter, I particularly like Arjun Appadurai’s. He writes that “[f]inancialization may be broadly defined as the process that permits money to be used to make more money through the use of instruments that exploit the role of money in credit, speculation, and investments.” (Appadurai 2016, 2).
From a science of the aftermath, post-Interbolsa forensics became progressively equipped with techniques that relied on financial risk analysis to anticipate criminal phenomena. Eventually, the conjuring of this financialized version of forensics, what I call *forensics of finance*, would become essential to the project of settling accounts in the aftermath of war. This transformation would also have profound effects over the temporality of forensic knowledge more broadly. But before I detail the alignment of forensics and finance in the third and final part of the chapter, let us turn first to the financialized techniques at the heart of the demise of Interbolsa and how they were presented to the public in the 2012 conjuncture.

2. Definancializing Financial Techniques

“And it is a repo trade gone bad that is ultimately at the heart of Interbolsa’s current predicament.”

(Yuk 2012)

Within a period of less than forty-eight hours, Vladdo’s tweet and the subsequent government measures to offset the impact of Interbolsa’s set off a frenzied public call for explanations. One of the first actors to emerge as an agent capable of defining the narrative was none other than Interbolsa. On November 2nd, one day after Vladdo’s social media exposé, Rodrigo Jaramillo, Interbolsa’s CEO and founder issued the statement that would provide the first “official” version of what had gone awry within the company. Aside from words to assuage the company’s investors and the public in general, Jaramillo focused on explaining a financial instrument known as repurchase agreements or “repos.” Like so many other contemporary financial products, repos are hardly understandable even to those who invest in them.
At their most basic repos are a “form of short-term borrowing” commonly used by banks, brokerage firms, and money market funds, as well as other financial institutions (Lo 2012, 158). However, taking into account their unique financial nature, they are best described as collateralized loans that provide short-term, high-risk liquidity, often times to be used to further invest in securities and derivatives markets. When employed systematically, as it occurs in contemporary financial markets, this type of lending based within securities markets creates a source of credit alternative to the traditional banking system, producing what has been described as “securitized banking” (Gorton and Metrick 2012) – a mode of banking that is fully dependent on volatility and financial speculation. Ultimately, repos are intimately tied to derivative markets.

For Colombia’s non-expert public, this was in all likelihood the first time that the term repo appeared in the news cycle. As Alberto Donadío, one of Colombia’s foremost investigative journalists wrote in his book about the Interbolsa scandal, repos were “an abstruse secret that was familiar to the alchemists of the stock market but that the public was abruptly being introduced to for the first time” through Interbolsa’s own words (Donadío 21). In his statement, the company’s CEO wrote,
Nuestra comisionista sufrió una crisis de liquidez, a pesar de tener solidez y solvencia de sobra. Para entender esta aparente paradoja, es necesario explicar lo que es una operación REPO. En esencia, una operación REPO es un préstamo entre particulares en donde el deudor entrega unas acciones que son el objeto del REPO más una garantía adicional del 40% en acciones o en títulos de alta bursatilidad. El acreedor presta el dinero, recibiendo a cambio unos intereses y conservando las acciones, más la garantía que representan un valor superior al prestado. La diferencia entre un préstamo simple, es que el REPO está intermediado por una sociedad comisionista de bolsa. El papel del intermediario en este caso es además, según las normas colombianas, ser garantía para el acreedor. En caso de que el deudor no pague, el comisionista está obligado a pagar al acreedor y quedarse con las acciones y la garantía, las cuales debe exponer al mercado, para recuperar el dinero. (Donadío 2013, 21–22)

The language used in the statement to define the complex financial instrument is important. Jaramillo’s definition of repos centered on describing repurchase agreements as loans between private individuals (“particulares”). The only difference between “a simple loan” and a repo, he elaborated, was the fact that as per national laws the latter is facilitated by a financial intermediary, in this case a brokerage firm. While Donadío and other investigative journalists who have carefully researched the case have focused on the extent that Jaramillo’s statement obscured the fraudulent dealings of the company, I want to emphasize a different aspect of it. By using terms such as “loan”, “private individuals”, “creditor”, “debtor”, “stock”, “interest”, and “collateral”, Jaramillo created for the reader a context of familiarity. Specifically, he used this vocabulary to describe the situation in a way that a non-expert public would hear primarily as a story involving the everyday credit operations that take place in the context of conventional banking systems. In contrast to repos, these were transactions that to many in Colombia would sound familiar. By comparing repos to ordinary bank loans, Jaramillo invited the non-expert

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57 Cite de Goede 61 (distributed responsibility chapter).
audience of his statement to enter the world of repos transactions as if they already knew them. His genius was to make repos appear to belong to Colombia’s existing “common sense” of finance.\textsuperscript{58} That is, identical to credit operations within non-financialized banking – a system in which the main actors are banks, and their clients are mainly individuals seeking liquidity in the form of credit for purchasing commodities.

For precisely these reasons, Jaramillo’s public statement ought to be regarded as a powerful discursive artifact that was not merely reproducing but creating a particular type of common sense. He was arguing for a mode of understanding repurchase agreements that removed them – at least in part – from the domain of finance. Instead of appearing as the sort of “exchange out of exchange out of exchange: making money out of making money” that characterizes the intensely financialized realm of securitized banking, Jaramillo presented repos to the public through the lens of traditional banking (Hall and Massey 2010). As I will show later in this section, this mode of representing the repo created the conditions of possibility/shaped the understanding of Interbolsa through the discourse of financial fraud, a mode of truth-telling characterized by its reductive approach to accountability.\textsuperscript{59}

However, contrary to what Jaramillo sought to represent in his statement, repos are not banking as usual. These financial instruments are best described as a type of short-term lending that originates in “nonbanks” (G. B. Gorton 2009; G. Gorton et al. 2010). As Gorton evocatively put it in 2010, a repo is “a form of money created by non-conventional banks.\textsuperscript{60} When used

\textsuperscript{58} Footnote on Taussig’s concept of the “common sense” of political economy as well as Stuart Hall’s use of the term.
\textsuperscript{59} Take for instance the title of Alberto Donadio’s 2013 book on the Interbolsa scandal, “The Interbolsa Cartel: Chronicle of a Financial Fraud.” Donadio, a seasoned investigative journalist and the researcher behind some of Colombia’s greatest financial scandals of the last 30 years, summed up the scandal in terms that unequivocally emphasize fraud: “What happened at Interbolsa was a monumental abuse of trust (abuso de confianza), marinated with fraud and swindling.” (Donadio 2013)
\textsuperscript{60} “Repo [like a check] is money… But, like other privately created bank money it is vulnerable to a shock” 2010 15. In other words, a repo is a form of money created by non-conventional banks. “Repo and checks are both forms of money” Gorton 2010 2. (See notes on Interbolsa & repos for full citation).
systematically – as they were by Interbolsa since at least 2008 as well as in U.S. global financial markets prior to the 2007 housing bubble\(^\text{61}\) – these credit operations tend to produce what Gorton defines as a “shadow banking system;” a parallel mode of banking that creates liquidity and debt without involving either traditional banks or “regular people” as lenders or debtors (G. B. Gorton 2010, 2).\(^\text{62}\) Instead, shadow banking involves “firms and institutional investors” creating money through securitization and repo operations.\(^\text{63}\) Precisely the \textit{exchange out of exchange}, the \textit{making money out of making money} enabled by derivative logics and that the statement strategically suppressed.\(^\text{64}\)

However, Jaramillo was not simply lying. After all, as Gorton writes, “the shadow banking system is, in fact, banking” (G. B. Gorton 2010, 42). Yet, the key point missing from the statement is the extent to which repos, when used systematically, constitute a market \textit{within} the financial market in which large amounts of money are produced, often times to free other assets in order to be used as collateral in other financial operations. This is precisely what took place at Interbolsa. The company devised a plan to increase the price of stock from Fabricato, a Colombian textile manufacturer in which Intebolsa had a vested interest.\(^\text{65}\) Their plan was to increase the price of the Fabricato share – in part by using the company shares as securities to back repurchase agreements that they sold to their clients. The last step in the business plan

\(^{61}\) The distortion also resulted from the fact that Interbolsa had used repos systematically (and increasingly during the last three years) [Cite González].

\(^{62}\) Contrary to what the reference to the “shadow” suggests, this mode of banking, while relatively recent – has been around for roughly twenty-five years – is very common in contemporary financial markets. In fact, it is one of the liquidity lifelines of the derivatives market. Gorton’s concept of shadow banking is at the heart of his 2007 theory on the role of repurchase agreements in producing the 2008 financial crisis. Beginning with a paper titled, “The Slap of the Invisible Hand,” Gorton went on to write several texts, many of them collaborations, expanding on his argument (G. B. Gorton 2009; 2009b; 2010; G. Gorton et al. 2010; G. Gorton and Metrick 2012). Together these texts provide a detailed analysis on the concept of repurchase agreements and their role within derivative markets.

\(^{63}\) “Securitization is the [banks] selling portfolios of loans” instead of holding them on their balance sheet, which is not profitable. As Gorton explains, the practice of selling loans “has been going on for about thirty years…” (G. B. Gorton 2009).

\(^{64}\) Footnote detailing the relation of derivatives to repos (in addition to what already stated in footnote 65).

\(^{65}\) Footnote detailing that vested interest.
involved the sale of Fabricato shares at the financially engineered – inflated – price. If the scheme had fully worked, Interbolsa’s partners together with a close circle of investors would have made an enormous profit. However, the plan went bust when, suspicious of the maneuvering behind the financial operations, other players in the market began to withdraw from the repo agreements. When the value of the shares used to back the loans dropped, Interbolsa did not have the money to pay back. The default soon followed.

To all effects and purposes Interbolsa was operating as an investment bank. Nonetheless, the CEO’s statement sought to refuse this interpretation. His framing had the effect of shifting the public’s attention from thinking of Interbolsa as the point of origin of financial systemic risk to the narrative of financial fraud and corruption that ended up

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66 As Yuk wrote for the Financial Times, “[t]he arrangement works as long as share prices of the stock be pledged as collateral hold up. (That seemed to be safe enough of a bet – Colombian equities has been among the best performers in Latin America) But the trade, according to Correa, began to sour when counterparties began to doubt whether the value of the Fabricato shares being used as collateral would hold and closed their positions. Under Colombian law, the broker who structured the deal would also be legally liable for the debt incurred. Interbolsa warned on its funding problem last week after it failed to make a payment on a COP20bn ($11m) loan. But others suggest that there is more than meets the eye. Luis Fernando Mondragón, a Colombian financial blogger, suggested that the repo trade was part of a more aggressive strategy devised by Interbolsa in conjunction with some of its clients to take over Fabricato. In this version of the story, Interbolsa, eager to expand and hungry for ever bigger profits, used Fabricato shares as collateral to borrow more money to build up an even bigger stake in the textile company. The goal? To break it up. With the parts of Fabricato worth more than the sum, Interbolsa and company were making a high-risk bet that they would be able to make a tidy profit by buying the shares on the cheap and selling the parts separately.” (Yuk 2012)

67 As Yuk writes, “[t]he decision to take these positions was reckless and, in any case, taken without consultation and worse, without even informing the Board of Interbolsa S.A.” (Yuk 2012). The positions that Yuk describes also entailed using clients’ funds without their consent.

68 As Murphy and Bocanegra wrote, the default had originated because the firm “became too dependent on liquidity from repurchase agreements tied to the price of [Fabricato] shares” (Murphy and Bocanegra 2012).

69 Perhaps the ur-example of the “multi-tentacled investment bank” is Goldman Sachs (which in 2006 was “involved in one third of all trades made in US equities”) (Blackburn 2006, 41). To draw a comparison between Goldman Sachs and Interbolsa is helpful in a country like Colombia, where so seldom do we get to consider the local institutional equivalents or counterparts of global finance. As Blackburn points out, one of the defining features of investment banking in the present is the fact that, just like in the case of Interbolsa, one investment bank “now finds itself on so many sides of a deal simultaneously that the mind boggles.” (Economist 2006 in Blackburn 2006 p. 42). Add reference that explicitly states that Interbolsa was operating as an investment bank.

70 To do so, his argument rested on two crucial assumptions: that banking is equivalent to finance and there is only one banking system.
dominating legal and political debates. In doing so, the public lost sight of the financialized techniques that were at the heart of the debacle. To recognize Interbolsa’s activities as banking would have opened the door to interpreting the default as the symptom of catastrophic financial risk produced by finance, not in spite of it.

Instead, what prevailed was not only a distorted picture of the use of repos, but also, and critically, what I call a definancialized interpretation of Interbolsa’s role in producing what had been diagnosed as the “crisis.” In contrast to the argument made by some of the in-depth journalistic analyses of Jaramillo’s statement, which primarily focused on the CEO’s cunning, this was a moment in which financialized techniques were successfully presented to the public as if fully detached from the logic of contemporary finance. Yet, while the distortion of the repo as a financialized technique had effects for the overall interpretation of the 2012 conjuncture, my claim here is more specific and has to do with the rise of forensics of finance. Precisely at the moment that finance became obscured through the definancialization of the financial techniques at the heart of the debacle, “the knowledge that was supposed to make finance work” but now appeared to be compromised (it was not only insufficient but flawed) (Martin 2010, 256), was

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71 As Martha Poon notes in her 2012 critique of mainstream anthropological attitudes that refuse to take financial value seriously, to describe financial phenomena as fraudulent is simultaneously “a potent political strategy that attempts to delegitimize its target [that is, finance]… [as well as] an epistemological dispensation from engaging with finance…” (Poon 2012)

Why did the public – following the president – cheered at the idea that the root problem with the collapse of Interbolsa was that the firm’s “fat cats” were fraudsters? Here I am borrowing language from Martha Poon’s provocation to anthropologists who, according to Poon, see equate finance with fraud. (“… why do so many anthropologists cheer at the idea that finance perpetuates false value? ‘We know what you’re up to, you fat cats are fraudsters.’”) (Poon 2012).

72 Besides being the financial instrument at the heart of the Interbolsa affair, repos are important for mapping the conjuncture of financial catastrophe for two other reasons. On the one hand, repos allow us to see and situate the crisis set forth by the collapse of Interbolsa in relation to the 2007-2009 global financial crisis, including the modes of knowledge that were seen as too good to fail and yet failed. On the other hand, this situatedness of the Colombian financial event in relation to global finance illustrates the self-marginalization of Colombia in relation to the history of global finance that I call “financial exceptionalism.” For an elaboration of this idea see the introduction to the dissertation.

73 As we might recall, Poon’s argument regarding the concept of systemic risk is that this type of risk begins within a banking institution. Given that Interbolsa was not an investment bank stricto sensu, partly what was at stake in denying that the use of repos constituted a mode of shadow banking was defining this as financial fraud instead of financial catastrophe.
coming into closer articulation with forensic knowledge. This paradox between the financialization of forensic knowledge and the definancialization of public explanation defined the conditions of existence of forensics of finance as an emergent mode of knowledge that made financial risk analysis integral to the forensic power of the state. As the following section shows, an institutional experiment within the country’s prosecutorial apparatus would be the main site of this process. 74

3. The Forensic/Finance Nexus

The Interbolsa affair exposed a structuring lack of financial forensic expertise within Colombia’s Fiscalía. This is a widely accepted statement of fact. As a historical conjuncture, however, the lack of forensic financial expertise (the one emphasized by the first to arrive at the “crime scene”) is only one part of the story. The conjunctural argument is that all of this happened precisely at a time when the state’s forensic apparatus was about to undergo a major reform in anticipation of a peace agreement – what was described at the time as a transitional justice reform. Even though Interbolsa was not the first time that repos were the root of financial scandal in Colombia, the brokerage’s collapse exposed a structuring lack of financial forensic expertise at a time when the state’s forensic apparatus was about to undergo a major reform in preparation for the possibility of a peace agreement. The convergence of derivative crisis and criminal justice reform for peacemaking shaped the aftermath of the Interbolsa debacle but also, and crucially, the model of legal accountability that would shape Colombia’s political transition

74 [See 2020 Interbolsa article]
from war to peace. Specifically, the reform would give financial expertise a key part in the forensic paradigm that would govern the transition.

Harnessing the reformist momentum as well as claiming the need to address the lack of financial forensic expertise within Fiscalía, the country’s Attorney General created the agency’s first financial analysis division under the banner of *Policía Económico Financiera* (Economic and Financial Police or PEF as per its acronym in Spanish). Together with a team of close advisors, the Attorney General designed PEF as a special forensic division focused exclusively on investigating the relation between finance and crime. PEF was an ambitious forensic experiment that was different from previous attempts to solve the lack of financial expertise within Colombia’s criminal justice system by simply hiring more experts. Instead, PEF was inspired among others by Italy’s Guardia di Finanza, a financial intelligence unit integrated to the state prosecutorial apparatus, as well as by the Great Britain’s intelligence units against the financing of terrorism. It was imagined as the first laboratory for the forensic analysis of financial risk within the state’s prosecutorial apparatus. Consequently, most of the professionals recruited as part of the team came from the private sector and were financial analysts (and therefore experts in financial risk). Many came directly from working in forensic accounting in the financial world, including from major financial analysis firms such as Price Waterhouse Cooper. Others were social scientists with expertise in data analysis. Experts in accounting working for private corporations also landed at PEF. 75

Crucially, PEF’s team did not work like ordinary criminal investigators. They did not arrive at the scene of the crime *after the fact* to collect clues. Instead, they relied on the tools of

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75 Footnote on private origins of expertise as well as this moment as one of transfer of knowledge from the private to the public sphere.
financial risk analysis to anticipate sites of criminal activity.\textsuperscript{76} In contrast with the reconstruction methods of forensics as conjectural analysis, PEF staff modeled potential criminal scenarios. A member of the team described the core of their labor as “understanding markets” and “analyzing within them the main risks that existed.” However, rather than describing their analyses as risk-centered anticipatory knowledge, they used the discourse of efficiency and referred to their work as defined by being “proactive.”\textsuperscript{77}

As a widely accepted institutional value, proactivity became the banner under which PEF deployed various types of risk analysis to produce a new and unprecedented range of forensic knowledge on both ordinary and war-related criminality. Using methods from financial risk analysis, until then monopolized mainly by two players, state intelligence on the side of the state, and banks in the private sector, PEF produced elaborate reports on complex market phenomena ranging from cryptocurrencies to illegal gold mining.\textsuperscript{78} Crucially, PEF also contributed to understanding financial phenomena associated with the war, specifically, they produced reports about the wealth of guerrilla groups like the FARC which, as I elaborate in Chapter II, were critical to the outcome of peace negotiations.\textsuperscript{79} Thus, for example, financial risk analysis was

\textsuperscript{76} While “risk analysis” sounds complicated, in practice it is a rather simple metric that combines probability and severity to predict risk. The use of risk matrixes is widespread today and ranges from car insurance rates to the financial profile of a country. [Elaborate what distinguishes earlier forms of financial risk assessment from its contemporary forms, particularly derivative risk].

\textsuperscript{77} So much was the language of risk avoided, that it was only until I began investigating the relation between PEF and Colombia’s financial intelligence unit – Unidad de Inteligencia y Análisis Financiero – that I became more fully aware that what PEF staff described to me as “strategic analysis” corresponded neatly to the first stage of financial risk analysis in the context of the global discourse of financial intelligence for crime prevention. I expand on this relation in Chapter Two.

\textsuperscript{78} Footnote on the private origins of this type of expertise.

\textsuperscript{79} Indeed, PEF’s work produced forensic knowledge that enabled one of the most unprecedented aspects of the peace agreement. In 2016 the FARC and the government agreed that the latter would surrender their wealth for the purpose of repairing their victims. In the context of the peace agreement between a state and an insurgent army, for the latter to surrender their property was nothing short of unprecedented. As I show in detail in the next chapter, PEF not only anticipated the importance of knowing the FARC’s wealth in the scenario of a peace agreement but became a harbinger of the transformation of FARC finances from a military objective to a key element in the infrastructure of political transition.
used to anticipate which markets were more likely to be captured by those factions of the FARC that the government anticipated would not demobilize and continue to operate as a criminal organization in the scenario of a peace agreement.

Publicly, however, PEF was not represented as a forensic team whose work dealt equally with wartime and ordinary crimes. To the outside – including to other divisions within Fiscalía – PEF appeared mostly as the logical response of the state apparatus to the Interbolsa affair. Outsiders perceived it as yet another special criminal investigation unit. However, one of the most significant traits of PEF’s forensic approach was the way their reports bypassed the traditional compartmentalization of the forensics associated with the investigation of wartime criminality from that of organized and everyday criminality. But not only that. PEF’s reports also worked to subvert the idea that economic explanations were not relevant to understand – from the perspective of criminal liability – the political violence associated with counterinsurgent wars. What allowed PEF to subvert the carefully sustained silos between economic and political analysis of crime was not an explicitly ideological commitment. Rather, it was the fact that financial risk analysis allowed PEF to think criminality at a scale where “the crime” and “the criminal” receded as objects of forensic interest. As a former PEF analyst who went on to work at Price Waterhouse Cooper told me, “our goal wasn’t simply to seize one or more assets [from a criminal], for us at PEF the goal was… to decapitalize an organization or a business structure, that was our end goal.” She then concluded by distinguishing between arresting criminals and what she called “decapitalization,” “if ten cases or ten arrests resulted [from our work], that’s awesome. But to us success meant [asking the question], did you decapitalize them? Yes or no?”

PEF’s focus on using the prosecutorial apparatus to seize property linked to criminal activity was essential to their methodology. This, however, appeared to be far from novel,
especially considering that Colombia has one of the more robust asset forfeiture regimes in the world. On the contrary, it gave the impression to outside observers that PEF was simply reproducing the same constellation of concepts and methods for persecuting illegal money flows that are globally known as “Follow the Money,” This approach, which first arose from antimafia investigations in Italy in the 1970s and later became a staple of global antinarcotic policies, particularly those driven by the War on Drugs, read money as the vessel of illicit activities (Ben-Yehoyada 2018).

Yet, at PEF the meaning of money and property changed. Rather than the primary forensic objects they had been since the 1980s and throughout the 1990s, money and property became derivative categories, both of them dependent on their relation to financial circulation – what expanding Mareike De Goede’s argument I describe in Chapter II as the financialization of the meaning of money and property (De Goede 2012). PEF’s methodological approach, centered on financial risk analysis as a type of strategic, meta-criminal mode of criminal investigation, perfectly illustrates this new paradigm. But perhaps less evident is the second trait of the financialization of the meaning of money. This one does not address directly the question of risk, but instead constitutes an implicit methodological shift. What once was understood as Follow the Money now implicitly becomes an approach to following financial trails.

PEF was one of the primary sites of this forensic reorientation, but the reverberations of the new approach were felt elsewhere within the prosecutorial apparatus. One example was Fiscalía’s special division for asset forfeiture investigations. As its former director put it to me over the phone, “when I hear about PEF what comes to mind is innovation, their investigation techniques, all of it was new [to us working on asset forfeiture].” The experimental forensic team ushered knowledge of “new financial products, new types of assets that we had not considered
before… we began to understand that criminals no longer need to use their name or that of their family members to hide their money.” She also explained how, “they now find much more intelligent ways to hide their assets… plus, in a globalized world like this one… the assets are nowhere to be found in Colombia.” Unsurprisingly, among those that took notice of PEF’s unconventional approach were the financial experts working for Colombia’s financial intelligence unit, another team who was fully steeped in a type of forensic analysis that was blind to the distinction between war and peace.80

The Interbolsa scandal and the accompanying rise of PEF as a site of forensic experimentalism constitutes a significant historical turning point in the transformation of the state’s criminal investigation apparatus. Unlike previous cases involving the blurring of legal and illegal financial operations, the Interbolsa case did not expose an inefficacious Fiscalía but instead brought into being a highly effective response from the criminal investigation agency. Since then, this response has developed into a full-fledged prosecutorial division. In fact, and paradoxically, as Colombian legislators and high courts fundamentally curtailed the possibility of prosecuting corporations for war-related crimes, the División de Finanzas Criminales (Criminal Finance Division) became the main site for the new Attorney General’s campaign against corporate corruption (Dinero 2017).

How did the financial and forensic experts hired by the government to find those responsible for the financial debacle become critical to the project of political transition? So far, this chapter has shown how from a catastrophic event of finance that exposed a lack of financial expertise within Colombia’s criminal investigation apparatus emerged a mode of forensic experimentalism that in some ways exceeded while in others did not account for the events of

80 They recognized the similarities between their own work and the type of analysis done by PEF.
financial turbulence that preceded it. In addition, this section demonstrates how this catastrophe and its aftermath began to shape Colombia’s future peace by integrating tools from financial risk analysis from wartime to ordinary organized crime. In the third and final section of the chapter I show how this is only one part of the conjuncture that set the stage for the rise of *forensics of finance*. The other side involves a second forensic experiment, one launched in parallel with PEF. While PEF was framed as entirely independent from peacemaking, this other experiment was seen as being about peace and thus as disconnected from the scene of derivative catastrophe. However, it is precisely by holding these two forensic experiments one in relation to the other that the nexus between forensics, finance, and political transition that shapes *forensics of finance* comes into full view.
Part III
The (Third) Conjuncture

1. Forensic Reform

The alignment between Colombia’s political transition, financial expertise, and forensic knowledge that this chapter maps can be further situated in the context of broader transformations to the institutional organization of forensic power in Colombia – what I call the conjuncture of forensic reform. In 2012, Colombia’s recently appointed Attorney General, Eduardo Montealegre, launched an ambitious “restructuring” (restructuración) project with two parallel goals in mind. First, he sought to make the prosecutorial apparatus more efficient and effective, particularly in the fight against organized crime, and second, he looked to align Fiscalía’s forensic knowledge production practices with the promise of peace between the FARC and the government.

Accordingly, Montealegre organized the restructuración around two main rubrics. The first one was the principle of “prioritization” (priorización), which sought to formally introduce legal and forensic criteria for rationalizing the discretionary power of the national forensic apparatus to investigate crime selectively and according to the seriousness of the crime. This entailed a

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81 It is worth noting the significance of Montealegre’s choice of the term “restructuring,” a corporate idiom and managerial practice that has also been used to index the “technocratic” modes of intervention used by global financial institutions such as the IMF and the World Bank in countries like Colombia.

82 Prioritization and selection principles of criminal investigation are well-known in modern criminal justice systems as well as in international criminal law. What these paradigms of criminal liability share is the idea that in order to prosecute crime effectively, you investigate the most salient crimes in order to identify the greater logic driving criminality. These approaches, which first emerged during the trials against Nazi German war crimes, also became very important as methods for investigating organized crime. For example, in the United States, this paradigm of criminal culpability shaped American legal doctrines of criminal conspiracy, and later, in the 1970s, would shape approaches to white-collar crime. See, Azuero-Quijano 2017.
shift from the existing prosecutorial paradigm, a model grounded on the legal mandate to investigate every criminal act; to one in which the rationalization of criminal punishment is based on the prioritization and selection of certain crimes. As stated in the administrative decision that launched the reform, the goal was to reorganize Fiscalía's operations around a "strategic" and "selective" approach to the prosecution of crime.83

The second rubric of the reform sought to introduce a new category of forensic knowledge to the country’s prosecutorial apparatus – “contextual criminal analysis.” To this end, the restructuring project created a new set of forensic experts, the so-called “context analysts.” Their job was to apply social-scientific techniques and methods to investigate organized crime “in context.” This measure entailed a significant reorganization of the established division of labor within the intensely hierarchical world of local prosecutors and forensic experts. Specifically, it integrated non-legal experts into the criminal investigation process by recruiting social scientists to perform the role of criminal analysts. These new experts would work within the National Unit for Context Analysis (Unidad Nacional de Análisis de Contextos or UNAC), a newly created specialized division dedicated to the “investigation of crime in context.” (Fiscalía 2012).84 UNAC’s stated purpose was to enhance criminal investigation methodologies by integrating social-scientific methods to situate criminal events within broader socio-political and economic contexts.85

83 “Fiscal General de la Nación, Directiva No. 0001, por medio de la cual se adoptan unos criterios de priorización de situaciones y casos, y se crea un nuevo sistema de investigación penal y de gestión de aquellos en la Fiscalía General de la Nación, Bogotá, 4 de octubre de 2012.” Prioritization was, without doubt, the most divisive element of the reform. Heavily criticized by legal experts, including many human rights lawyers, it remains to date the source of political controversy both to the left and right of the political spectrum.

84 Footnote elaborating the relation between analysis of crime in context and prioritization (the analysis of crime in context was one of the steps in the process to select and prioritize cases).

85 The trajectory of institutionalized social-scientific knowledge and its mobilization to explain war-related violence since the 1970s is a key part of the story behind the rise of “context analysis” as forensic method. As Juan Pablo Vera
Crucially, Montealegre’s restructuración simultaneously operated as a reform centered on political transition and also exceeded the catalogue of reforms commonly associated with the adaptation of domestic legal regimes to the imperatives of transitional justice. On the one hand, the reform emerged squarely within the 2012 discussions of criminal justice reform in preparation for peace. This was something that the Attorney General explicitly stated in several public statements and interventions at the time. His declared goal was to adapt the prosecutorial apparatus to the principles of transitional justice. However, as I elaborate in the following section, although the reform had been explicitly framed by both the Attorney General and the government as an effort to prepare the prosecutorial apparatus for the scenario of a peace agreement with the FARC, in practice its scope exceeded the transitional justice context within which it first emerged. As the next section shows, these simultaneous dimensions of the reform set the stage for the conjunctural alignment of political transition with financial forensic expertise.

2. The Rise of “Contextual Analysis” as Forensic Technique

One chilly morning in August of 2012 – three months before Interbolsa’s scandalous default – I sat down to chat with one of the designers of the restructuring project of Colombia’s Fiscalía. Alejandro Ramelli, the lawyer that was about to become the first director of the National Unit for

_argues, since at least the 1980s social scientific reports commissioned by the government have played a key role in producing a mode of expertise that would become essential in the context of the country’s twenty-first century transitionalism (Vera Lugo 2015). Another important strand in the genealogy of context analysis was the work of Luis Carlos Garay, who developed a model of social network analysis to map and represent structures of organized crime, starting with the paramilitary in the first decade of the twenty-first century (Garay Salamanca and Salcedo-Albarán 2012). While rhetorically there was a strong association between context analysis and qualitative methods, in practice, the contextual mode of representing and understanding organized crime aspired to the creation and mining of ever-greater sets of data, including using algorithmic modeling (Springer 2015).
Context Analysis (UNAC), agreed to meet me on his way to the office. At the time the Attorney General’s reform project was the topic of heated political debate and several among my interlocutors had directed me to Ramelli as one of the key actors for better understanding the details of the intended reform, as well as for discussing the Attorney General’s response to the criticisms waged against his plans by several local and international legal experts.⁸⁶

That morning Alejandro and I met for a coffee on his way to work at a busy city café – frequented in the early hours of the day by the city’s financial and political elite – to discuss the details of the Attorney General’s ambitious reestructuración. Ramelli, a lawyer with straightforward conversational manners and decades of experience in the judiciary, was known for being an expert in international criminal law with little experience in the field of criminal investigation.⁸⁷ Without any prior experience working for the prosecutorial apparatus, Ramelli’s appointment as UNAC’s director reflected the academic edge of the Attorney General, a former Constitutional Court Justice considered to be one of the country’s leading criminal law scholars with an impressive trajectory as a litigator.

During our conversation, Ramelli became particularly animated as he spoke about the details of the newly established UNAC. At one point, he asked if he could borrow my pen and then proceeded to sketch on my notebook a flow chart showing UNAC’s position within the structure of already existing special criminal investigation divisions at Fiscalía. As he worked on

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⁸⁶ While UNAC received significant amount of attention in public discourse, the wider reform to the Fiscalía that began under Attorney General (AG) Eduardo Montealegre that I describe here has not been the subject of systematic and sustained attention. Perhaps the most memorable debates around the AG’s reformist impetus were the ones between him and procurador Alejandro Ordóñez regarding the “prioritization and selection” mechanisms.

⁸⁷ Without any prior experience working for the prosecutorial apparatus, Ramelli’s appointment as UNAC’s director reflected the academic edge of the Attorney General, a former Constitutional Court Justice considered to be one of the country’s leading criminal law scholars. My familiarity with Ramelli’s conversational style dated back to half a decade earlier when, while writing my undergraduate law thesis, an ethnography of Colombia’s Constitutional Court, I had interviewed Ramelli who at the time served as law clerk for one of the nine justices of the court.
the diagram, he explained to me how UNAC’s mission fit within the Attorney General’s vision. He explicitly described it as a broad set of reforms planned by the Attorney General and his team of close advisors as they sought to prepare the criminal investigation apparatus for the transition from war to peace.

As he turned the page of the notebook, Ramelli asked me to confirm that we were “off the record.” Then, he proceeded to sketch what the headquarters of the new institution would look like. “The prosecutorial teams,” he said as he put down the pen and showed me the drawing of what looked like a beehive cut in half, “… they can’t work like this, I mean, like old-fashioned prosecutors, sitting alone at their desks, numb from staring at a screen.” When I asked about the difference between UNAC and the many other bureaus at the Fiscalía, he replied matter-of-factly, “[W]e’re not in the business of dealing with your average criminal investigation. These are some of the most complex criminal cases this country has ever faced. We’re talking about systematic crime.”

During the rest of our conversation, as we shifted from discussing the imagined spatial setting of the new investigation unit to the projected work to be done by UNAC, Ramelli emphasized the role of a new type of forensic analysis in the difficult task of detecting and investigating so-called “systematic crimes” (crímenes de sistema). He explicitly made the case

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88 The concept of systematic crime, which in principle is a term associated with the legal doctrine of international criminal law, plays a key part in the of context analysis. Ivan Orozco writes that "the representational and prosecutorial capacities of ordinary justice are highly limited when it comes to systematic crimes (relation between crimes and prosecutorial models)". Iván was one of the few Colombian legal scholars I knew in 2012 who understood the rise of “systematicity” as a historical phenomenon that had started at Nuremberg. Like me, he believed that the “empire of systematicity” (as he called it), would transform Colombia’s criminal investigation apparatus in both desirable and problematic ways. We both understood that the turn to a “prioritization and selection” model was intimately entwined with the rise of systematicity as a category central to human rights discourse, humanitarianism, and international criminal law. We knew this because we both had researched the Nuremberg Trials and understood that the investigation of systematic crimes had come hand in hand with the rationalization of Allied discretionary power to prosecute. (Azuero Quijano 2017) (add citation of Orozco’s work)

89 Footnote on concept of systematic crimes linking both international criminal law and Garay’s theory of macrocriminality.
for a new type of expertise: “We are hiring people, non-lawyers, who will help us show the context behind the crime, and how one crime relates to others, I mean, to patterns of criminality. This has never been done before, not here [in Colombia], at least not that we know of. We need geographers, historians, statisticians, and political scientists. Crime is no longer the business of lawyers and police.”90 A few months later UNAC would become the institutional home for this new type of experts.91

Interestingly, Ramelli’s account overstated the newness of context analysis as a mode of expert knowledge within Fiscalía. Indeed, since 2005 a special prosecutorial division – Unidad de Justicia y Paz – charged with investigating crimes committed by the demobilized paramilitary, had included some degree of contextualization in its investigations (cite Gómez).92 But not only that. In 2013, the year the restructuring project launched, UNAC was only one of several recently created national institutions for political transition that used contextual analysis as one of its primary methods. In contrast to what Ramelli’s account suggested, at the time of UNAC’s

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90 At the end of our conversation Ramelli asked me if I knew anyone with an interdisciplinary background in law and the social sciences. The first person that came to mind was a close law school friend of mine, a lawyer and historian, whose name I gave to Ramelli. The friend and colleague who I mentioned during that fateful conversation would go on to become the second in command at UNAC. Thanks to her and Ramelli’s openness to my research, I was able to closely shadow the work of the fledgling UNAC between 2012 and 2014, including a summer spent as external consultant to one of their teams. This level of unrestricted access shaped my ongoing commitment to UNAC as a forensic experiment with which I found myself aligned both as an international criminal lawyer and as a Colombian citizen. I mention this here because readers of this chapter have often asked me to make explicit my trajectory and allegiances to UNAC, a project that I continued to be interested in understanding long after its dismantlement in 2014.

91 Less than two months after our meeting, on October 4, 2012, the unit became officially established after the Attorney General signed the decree of the highly anticipated reform. The temporality of these reforms can, and in fact should be, traced back to the first wave of reforms to Fiscalía’s structures beginning in 2005 with the creation of the Justicia y Paz division in the context of the demobilization of paramilitary groups.

92 In fact, it was no secret that one of the Attorney General’s immediate goals in creating UNAC was to address some of the lessons learned from the methods used to contextualize crimes within Justicia y Paz. UNAC constituted Montealegre’s correction to what he saw as contextualization methods that remained too attached to case-by-case inductive methods for determining criminal liability. The rise of UNAC entailed the coexistence within Fiscalía of two explicitly conflicting conceptualizations and methodologies of context analysis in crime investigations. The conflict remained entrenched up to the moment when, in a widely criticized move, the Attorney General appointed the long-time director of the Transitional Justice Special Division (formerly Justicia y Paz) as the new head of UNAC. Many of UNAC’s analysts and prosecutors who experienced the transition pointed out to me that this decision had entailed that the old case-by-case approach dominant within Justicia y Paz criminal analysis had steadily displaced the “context analysis” approach to systematic crime that distinguished the work of UNAC during its earlier stages.
creation “contextualization” had become a key technology across the country’s dense “humanitarian bureaucracy” (Vera 2017).93

Yet, at least two elements of the reform signified there was also at work something drastically new at the heart of the Attorney General’s vision for “contextualization” as a forensic practice. First, there was the fact that context analysis – as the primary forensic technique of the prioritization model – was meant to function not as a tool of postwar accountability but as a general principle of criminal investigation beyond peacemaking. Accordingly, while the official decree of the reform foregrounded prioritization and context analysis, it did not include explicit reference to transitional justice. Instead, the decree laid out the project’s goals in terms that made it appeared detached from the project of political transition.94 The Attorney General and his advisors framed prioritization and contextual analysis as strategies centered on improving local prosecutors’ case management strategies.95

Second, the reform centered on “organized crime,” a category of criminality long seen as one that intersects and yet exceeds crimes associated with Colombia’s protracted war.96 According to the Attorney General, the greatest problem with the existing prosecutorial system was the “case-by-case approach;” an operating principle of modern criminal investigation that centers on individual criminal liability. Montealegre and his closest advisors held the view that this

93 Thus, for example, in May 2013 I attended a two-day workshop on “contextualization” methods that involved UNAC, Unidad de Justicia Transicional (UJT), Unidad de Víctimas, and Unidad de Restitución de Tierras. The goal was to train public servants working across multiple offices on the rather new technique while simultaneously working towards a standardization of its categories and methods.

94 The scope of the reform — and the fact that it exceeds the transitional justice context within which it first emerged — is evident from the document’s very first sentence: The directive opened with the following statement: “the goal of this directive is to adopt criteria for the prioritization of situations and cases, as well as to create a new system of criminal investigation and case management for the Attorney General’s Office” (Fiscalía General de la Nación 2012). My translation.

95 This was already apparent in the framing of the reform as one that envisaged “a new system of criminal investigation and case management for the Fiscalía General de la Nación” (Fiscalía General de la Nación 2012). This aspect of the reform that reflects the “managerial turn” in criminal justice systems across the globe (Chilean sociologist citation).

96 Footnote comparing/distinguishing “organized crime” v “systematic crime”.
approach was antithetical to the goal of dismantling criminal organizations. The fact that investigations revolved around individual criminals and the immediate circumstances of the case foreclosed “revealing the true sociopolitical dimensions of organized crime.” Morever, the case-by-case approach, and specifically “the case,” the emblematic analytical unit of crime investigation, compromised knowledge produced by the forensic apparatus. The “dispersion of investigations and available information” stated the reform, “made it impossible to establish and make publicly known the [investigated] illegal group’s organizational structure, as well as the criminal and military dimensions of its operations.”

To overcome these problems, the restructuring of Fiscalía introduced context analysis both as a forensic practice and a new scale of criminal analysis.

Ultimately, the Attorney General mobilized context analysis not merely to create better postwar accountability, but to enact a more sweeping reorganization of knowledge production within state’s prosecutorial apparatus. Although not explicitly, the reform championed the idea that the apparatus’ main function had to shift from effectively prosecuting most crimes case by case, to strategically staging interventions to dismantle criminal organizations, prioritizing crimes executed systematically, and selectively prosecuting only the most responsible. The move was twofold: the emphasis on “context analysis” as the work of establishing the structuring

97 Crucially, they framed the problem in terms of data management. The Attorney General effectively established a link between the question of information management and the case-by-case approach — which Directiva 1 refers to as the “traditional paradigm of investigation management.” Subsequently he mobilized it to make to case for a more “systematic” approach to criminal investigation. See Directiva 1 p. 26

98 Cite ICTJ (“¿Cuál es la causa principal de la imposibilidad de la Fiscalía para hacer frente a las diversas manifestaciones de crimen organizado? La respuesta a esta pregunta sintetiza el argumento principal sobre el que soporta el Fiscal General de la Nación la explicación de su tesis: La persistencia de un modelo de funcionamiento institucional anclado de manera exclusiva en “el paradigma [tradicional] de gestión de la investigación por casos individualmente considerados”)

99 While the role of contextualization has been largely associated with the creation and transformation of government institutions under the imperatives of peace negotiations, importantly, UNAC was perhaps the first of these institutions to deploy context analysis beyond the distinction between ordinary and transitional criminal justice. Importantly, it is this broad project that has endured. By 2019, when I concluded fieldwork, context analysis had been largely institutionalized as a general technique of crime detection within Fiscalía.
conditions of crime was seen as central to prioritizing cases which would then resolve into the prosecution of the most responsible individuals under the principle of personal culpability.\textsuperscript{100}

As a result, UNAC became the main site of an auspicious institutional experiment that sought to institutionalize the context of a crime as a new scale of forensic knowledge.\textsuperscript{101} But what exactly did the investigation of crime-in-context look like in practice?\textsuperscript{102} To this end, and invoking a genealogy of “contextualization” as a technique central to the practice of both international criminal prosecutions and human rights law, UNAC began developing the forensic technique that came to be known as context analysis.\textsuperscript{103} Essential to UNAC’s forensic method was how the focus of criminal investigation shifted from the individual crime or criminal towards the rationale or logic behind it. Now, to be clear, UNAC’s intended purpose did not entail abandoning the criminal investigation of individual crimes or the task of identifying those

\textsuperscript{100} As I have argued elsewhere, the tension between the two moves, the simultaneous nod to the systemic as the individual ultimately becomes the embodiment of structural fault, is not antithetical to the project of liberal criminal justice but in fact constitutive of a model of intervention in the field of crime that begins in the aftermath of WWII (Azuero Quijano 2017).

\textsuperscript{101} [Revise this footnote] Take for instance the role of the International Center for Transitional Justice (ICTJ), one of the most prominent transnational human rights organizations operating in the country. Following UNAC’s creation they poured significant financial and human resources into the fledgling unit and became one of the non-governmental expert partners of the Fiscalía. Their experts participated in developing the methods and strategies outlined in Directiva 1. In a published report resulting from this alliance, ICTJ articulated their involvement with UNAC in the following terms: "In 2012, the Attorney General decided to adopt a new model of criminal investigation in context with the goal of facing the challenges of systemic [crímenes de sistema] and organized crime. Given the potential impact this decision might have in overcoming impunity for grave human rights violations, the International Center for Transitional Justice, has been accompanying the efforts for the materialization [of Directiva 1], particularly, those that have come from the Unidad Nacional de Análisis de Contexto (UNAC)."

The ICTJ report from which this quote is taken from refers to UNAC as DINAC, which calls for a brief clarifying note. Soon after its creation UNAC became DINAC. While this name change is not without significance, for the remainder of the paper I refer to the institution as UNAC. See Martínez, David, “Manual de análisis contextual para la investigación penal en la Dirección Nacional de Análisis y Contextos (DINAC) en la FISCALÍA”, Centro Internacional de Justicia Transicional, 2014.

\textsuperscript{102} And, by contrast, in what sense were crimes, prior to the reform, investigated, “out of context”? In other words, how did it come to be that a new category of forensic expertise emerged in 2012 within Colombia’s prosecutorial apparatus under the rather vague rubric of “context analysis”?\textsuperscript{103} This new mode of analysis called for the redefinition of “criminal analysis,” as the “systematic and interdisciplinary study of crime.” According to Directiva 1 context analysis refers to “the systematic and interdisciplinary study of crime as well as those problem-factors that alter social order and are relevant to criminal investigation (socio-demographic, spatial and temporal, among others) in order to fulfill the constitutional role assigned to the Fiscalía and advance victim’s fundamental rights to truth, justice, reparation and non-repetition.” My translation.
individually responsible for those crimes. Instead, the shift to contextual analysis of crime is best understood as the transformation of the existing paradigm of criminal liability in order to integrate a new scale of forensic analysis. As Jorge, a political scientist hired as part of UNAC’s team of contextual analysts explained to me during one of our conversations: “the [new forensic] paradigm… allowed us to think more in terms of structures [of crime] and less in terms of [criminal] cases.” He then added using a common perspective metaphor, “it is as if suddenly we were seeing the forest and not just the trees… [this approach] allowed us to see entire organizations.”

The emergence of contextualization also conjured a new type of expert — the contextual analyst, while also creating the challenge of giving legal status to a new object of forensic knowledge — the context of crime. As a criminal investigation unit, UNAC was initially organized in teams that coupled the traditional figures of domestic criminal investigation (prosecutors and criminal investigators; the latter also known as “policia judicial”) with analysts (which included in its ranks social scientists, statisticians, and engineers, among other professionals not specially trained in criminal investigative practices). Key to UNAC’s early model of criminal investigation, which both prosecutors and traditional criminal investigators met with great resistance, was the decision by Ramelli, as UNAC’s director, to allow analysts to perform leading functions (that is without being hierarchically subordinated to prosecutors). The decision, which in the surface might appears as of little consequence, had the effect of upsetting the entrenched professional and class hierarchies that have historically structured the state’s criminal investigation apparatus (See Centro de Memoria Histórica, “Basta Ya!”). The two reorganizations of UNAC in 2014 and later 2015 overturned the original configuration and reestablished the conventional organization of investigative teams under the supervision of prosecutors. This was achieved by a series of smaller transformations which included, but are not limited to, the following: (i) limiting the functions of analysts to those of traditional forensic police (known in Colombia as “policia judicial”; (ii) eliminating the analyst coordinators

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104 [Footnote elaborating on the contextual analyst as a type of “symbolic analyst” (Holmes and Marcus)]
105 Key to UNAC’s early model of criminal investigation, which both prosecutors and traditional criminal investigators met with great resistance, was the decision by Ramelli, UNAC’s director, to allow analysts to perform leading functions (that is without being hierarchically subordinated to prosecutors). The decision, which in the surface might appears as of little consequence, had the effect of upsetting the entrenched professional and class hierarchies that have historically structured the state’s criminal investigation apparatus (See Centro de Memoria Histórica, “Basta Ya!”). The two reorganizations of UNAC in 2014 and later 2015 overturned the original configuration and reestablished the conventional organization of investigative teams under the supervision of prosecutors. This was achieved by a series of smaller transformations which included, but are not limited to, the following: (i) limiting the functions of analysts to those of traditional forensic police (known in Colombia as “policia judicial”; (ii) eliminating the analyst coordinators
From the beginning, UNAC’s docket included situations separate from accountability concerning war-related crimes. Indeed, one of the first cases selected to be investigated by UNAC was the case known as Bogotá’s “contract carrousel” — a scheme of fraudulent corruption and contracting that involved several city officials including then city mayor Samuel Moreno. Instead of conceiving itself as a unit charged with investigating political violence, UNAC deployed context analysis to reveal the non-apparent connections between political violence and its economic and social determinations – thus reconceptualizing the long-held view that political explanations of violence and economic determinations of crime belonged in separate spheres and exceeded the prosecutorial function. Illustrative of its approach was UNAC’s contribution to understanding the role of big business in explaining the otherwise meaningless patterns of union leaders murdered across the country during the late 90s.

Using context analysis UNAC produced reports that came to be known simply as “contexts” and “macro-contexts.” These documents sought to render visible the connections between political violence and its economic and social determinations – implicitly challenging the siloing between political transition and the “economic model” that President Santos had vowed to leave untouched. Despite the fact that contextualization required time and was not producing the quick turnaround in prosecutions and convictions that had been promised by the Attorney General, UNAC’s work quickly earned enemies on the right, but also, and crucially, within the Colombia’s military and corporate elites. Although very few observers of UNAC’s work remarked upon this at the time, UNAC’s relation to transitional justice became increasingly
tense. Their analyses destabilized the distinction between the economic and political dimensions of injustice that structure transitional justice as a model of accountability (Meister 2010; Franski & Olarte 2014).

In part for these reasons, UNAC’s existence as a self-standing special criminal investigation unit was short-lived. Despite its ambitious plans and initial results in rendering visible the relations between political violence, state apparatuses, and economic elites through contextual analysis, UNAC’s fate was sealed by Ramelli’s unexpected resignation in February 2014, amid public allegations of corruption against him and Attorney General Montealegre.¹⁰⁹

This, however, did not bring about the end of context analysis as a forensic method. On the contrary, contextualization continued to be used by UNAC’s prosecutors and analysts who, after Ramelli’s resignation, were reassigned to work as part of Fiscalía’s Transitional Justice Special Division. While this institutional reshuffling brought contextual analysts back into the frame of postwar accountability, context analysis had already debilitated the distinction between criminality during so-called ordinary times and the atrocities traditionally associated with transitional times. By scaling up from the individual criminal and crime to the context of criminality, this type of analysis consolidated as a forensic technique with potential beyond the project of political transition.

No one seems to have understood this more than Montealegre’s successor, Attorney General Néstor Humberto Martínez. Appointed in 2016, only months before peace negotiations successfully came to fruition, Martínez was an outspoken critic of the peace agreement and particularly of the legal arrangements to hold the FARC accountable for their crimes. Soon after

¹⁰⁹ Although the accusations were never fully corroborated, the Attorney General, in a move that surprised many within his closest circle, caved to public pressures and partially dismantled the ambitious project of context analysis that he had created only two years prior (Azuero-Quijano 2016).
he took office, Martínez implemented his own reform to Colombia’s Fiscalía, a move that many
observers interpreted as directly aimed at undoing Montealegre’s turn to prioritization and
contextualization. Given his opposition to the project of political transition many quickly read
Martínez as an enemy of Montealegre’s forensic reform, including the practice of context
analysis. However, contrary to the assumption that Martínez would reject context analysis, the
new Attorney General harnessed the technique and further institutionalized it.

As a high-level official within Fiscalía who worked both under Montealegre implementing the prioritization strategy and then under Martínez told me in 2019, “in the private
sector [where Martínez worked as a lawyer] you are constantly doing context analysis… when
you do due diligence you are doing context analysis… when you do market analysis [too].” The
official’s reasoning offers a critical point of articulation between context and financial risk
analysis as a new type of forensic formation. As he saw it, Martínez, an expert in the legal
architecture of financial markets, had squarely oriented his forensic reform towards deepening
the modes of expertise that had been integrated into the prosecutorial apparatus following the
Interbolsa debacle – PEF being the epicenter of it. Yet, rather than seeing context analysis as
antithetical to this effort – as many observers had mistakenly interpreted – Martínez, who before
being elected Attorney General ran the firm that provided counsel of Colombia’s largest
financial conglomerate, quickly understood the inherent potential of context analysis for enabling
modes of abstraction and scaling up criminal analysis that were akin to those used by banks and

110 “Desde el sector privado se hace análisis de contexto” “Cuando haces due diligence haces contexto… análisis de mercado”
111 In the introduction to the dissertation, I detail Martínez trajectory representing the legal interests of some of Colombia’s wealthiest financiers.
state financial intelligence to measure financial risk.\textsuperscript{112} His “tough” approach to crime, heavily centered on the promise of “following the money” to get to the criminals, seemed to align with great promise with the work of quirky context analysts. Many of them were given key positions within Fiscalía during Martínez’s tenure while others experienced continuity between Montealegre and Martínez’s version of context analysis.

3. \textbf{The Context/Risk Nexus}

At its most practical the forensic alignment of finance and political transition came down to the entwinement between two apparently independent techniques: context and financial risk analysis. First, context analysis enabled an epistemic shift away from crimes and criminals, creating the conditions of possibility for a type of criminal analysis that was more abstract but also, and crucially, that worked to scale up criminal prosecution in unprecedented ways. While in some ways it was a coincidence that context analysis emerged almost simultaneously with the financial analysis of crime, in important ways, it was not. For instance, it is not just coincidence that both techniques found potential in the possibility of scaling up criminal analysis to make the criminal apparatus more efficient.

Both techniques also fall squarely within the process of transformation of the political economy of punishment that Michel Foucault described in 1978 as the shift away from the individual as criminal justice’s primary object of concern (Foucault 2010).\textsuperscript{113} Foucault argued

\textsuperscript{112} By the time of Martínez’s mediatic resignation in 2019 – he was a master of prosecutorial spectacle – Fiscalía had been reorganized into three main divisions: Organized Crime, Citizen Security (“seguridad ciudadana”), and Criminal Finances. The first two divisions had their own dedicated context analysis units and the third one, an offshoot of PEF, instituted financial risk analysis.

\textsuperscript{113} Brief footnote elaborating on College de France lectures.
that key to this transformation was the emergence of the “milieu” or “environment” as a new category of state intervention in the field of punishment. In a nutshell, the claim was that the model of economic behavior presumed by neoliberal economic theory had shifted punishment from intervening at the level of the individual criminal — the classical function of criminal punishment that he had articulated in his theory of disciplinary societies — to acting on the environment (Foucault 2012). Context analysis worked along similar lines by introducing a new scale of criminal analysis beyond the individual criminal and the criminal act.114

Yet, there is also a more specific relation between financial risk and context, which links the latter to the derivative logic addressed earlier in this chapter. One of the defining features of derivatives is their status as “an asset whose value is based on that of another asset, which could itself be a derivative” (Appadurai 2016, 4). Because the chain of links that binds one derivative with another in contemporary finance is “indefinitely long,” it follows that “the references and associations that compose a derivative chain have no status other than the credibility of their reference to something more tangible than themselves” (Appadurai 2016, 4). That ‘something’ more tangible involves the “context” that is built into derivative pricing as well as derivative calculations of risk.

As LiPuma and Lee explain, the pricing of derivatives depends heavily on what they call “strategies of representation” in the sense that “the calculation of risk across localities always involves evaluations of others’ political culture and practices of governance” (LiPuma and Lee 2004, 57). In other words, the pricing of derivatives relies on context, understood as a financial technology of representation. Trying to illustrate their point they refer to representations of several non-North Atlantic states, including Colombia:

114 Short footnote about what Foucault did not see that is now apparent about the trajectory described in this paragraph.
“[t]here is a kind of telescopic process in which the electronic media reduce extremely complex local realities to encapsulating images that become instantaneously global – violence initiated by Islamic separatists in the Southern Philippines and in western Turkey, marches by workers in Thailand and South Korea protesting against the government’s labor policies, the uncontrolled spread of AIDS in the Kwa Zulu Natal province of South Africa, revolutionary activity throughout rural Colombia. The culture of the financial markets, animated by Western ideology, turns each of the circulated images into a universal icon of a certain species of locality. The markets then affix specific and different sets of summary images to each locality in an effort to quantify the counterparty risk inherent in its politics” (LiPuma and Lee 2004, 57–58).115

This reduction of political contexts to summary images, risk variables, and actuarial calculations has consequences for the notion of systemic financial risk that opened the chapter. It is ultimately context as a mechanism of representation – through its summary images – that informs the financial notion of “contagion,” and “its operative understanding that financial turbulence in one country will invariably infect all others of the same type.” With this in mind, it is helpful to revisit Santos’ response to the Interbolsa scandal. At this point of the analysis, we can see more clearly the two operations at work in his response to the scandal. He accepted the notion of systemic financial risk at the very moment that he was invested in remaking the summary image that had defined Colombia as a high-risk environment for foreign financial activity. Following from this observation, I want to emphasize the “context” of a promised political transition – enacted through the implementation of transitional justice measures in preparation for the peace agreement – as a financial technology of representation in its own right.

115 Emphasis is mine.
As transitional justice builds futurity into the present, it lodges into the financial system a future image, one in which the context of a future financial operation has been transformed *ex ante*.

Context as forensic technique thus constitutes a technology of representation that far from any romantic reminiscence to qualitative, social-scientific modes of knowledge, becomes the object of new and unprecedented abstracted calculations under conditions of derivative finance. This paradoxical quality of context analysis was not entirely lost on some of my UNAC and PEF interlocutors. It was them who connected the dots between the work of both teams for me and oriented my work towards the question of the point of articulation between contextualization and financial risk analysis.

Starting in 2012 with the creation of UNAC, context analysis became a forensic technique that transformed Colombia’s existing model of criminal investigation. Under a transitional justice agenda this project, which had begun as far back as 2005, continued to shape forensic practices even after UNAC’s demise in 2012. As my research between 2018 and 2019 revealed, context analysis continued to be used across Fiscalía even after UNAC’s demise. Moreover, it became institutionalized even while the financial analysis of crime appeared to have the greatest backing from the newly elected Attorney General.

While the creation of PEF heralded the integration of financial risk analysis into the criminal investigation apparatus, UNAC focused on the creation and practice of a method for investigating crimes from the perspective of the structures that produced criminality. In 2013 the turn from “seeing the trees” to “seeing the forest” created new possibilities for forensic knowledge to expose links between financial phenomena, political violence, and organized crime. Even though primarily presented to the public and understood by legal experts as the adaptation of the country’s criminal justice system to the principles of transitional justice; the
introduction of context analysis to the work of criminal investigation brought about a profound transformation of Colombia’s forensic epistemologies. The contextual analysis of crime represented a new paradigm of criminal investigation. Yet, at its most ambitious contextual analysis produced paradoxical effects. On the one hand, it was mobilized by local progressive legal intelligentsia as a *counterforensic* practice. On the other, the shift to context would enable the financialization of forensic knowledge.

In 2013 few observers would have anticipated that context analysis would come to represent one of the keys to the rise of financial risk as an object of forensic knowledge. Yet PEF and UNAC emerged within the same historical conjuncture as unorthodox forensic units within an ambitious reform to the criminal investigation apparatus – even as they were regarded as mostly unrelated projects. The premature demise of UNAC came to be interpreted as the end of the trajectory of contextualization as a forensic method. As several within Fiscalía put it to me, while UNAC – including context analysis – appeared to have floundered, PEF flourished and was fully institutionalized by Martínez as the Division for Criminal Finances – a full-fledged special unit

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116 By counterforensic I mean the use of forensic means against the goals of the state. I expand on this concept in the Introduction to the dissertation. Here my point is that UNAC’s work ran against the hegemonic quality of forensic knowledge as a science of the state against the individual criminal. As I describe in the Introduction, I expand this proposition to claim that the domain of the counterforensic, the work of using forensic means to question the state’s claims to truth, is not just a practice that opposes, but one that in fact at times constitutes the postcolonial state. In this sense, UNAC constituted one moment in the dialectic of forensic power and an instance in a long genealogy of Latin American counterforensic practices. I read the work of criminal analysts like Jorge, working against the grain of criminal detection in order to “see the forest,” as instances of an ongoing and unfolding trajectory of counterforensic tactics.

117 By 2018 the alignment of both techniques clearly registered in conversations with Fiscalía staff and other public officials. Among the first to mention it was Victoria, a staff lawyer working for Colombia’s Procuraduría (Ombudsman’s Office). She saw a connection between context analysis and the work of tracing FARC assets. In her words: “Una vez se establece ese macro empiezan analizar de todas esas conductas delictivas que se han dado, que se han llevado a los jueces, incluso que han llegado a condena, de todas esos vínculos con las FARC que pueden resultar cuentas bancarias, sociedades, apartamentos, carros, semovientes, fincas y resultan dentro del contexto que son bienes de FARC y que hacen parte de procesos de investigaciones, incluso de extinción de dominio, que son triunfos de alguna manera de la fiscalía general de la nación… Entonces digamos que ese contexto en lo que sirve es cuáles son los productos de actividad ilegal de las FARC y cuáles de delincuencia común, porque nos encontramos con muchos bienes que fueron utilizados para el narcotráfico, pero no tuvieron relación con las FARC, sino por delincuencia común. Para eso sirve el contexto…”
driven by a team of financial forensic analysts, including many former PEF staff. However, well into Martínez tenure as Attorney General it was still not apparent the extent to which PEF’s institutionalization of financial risk analysis into the prosecutorial apparatus had been enabled by the broader turn to the contextualization of crime championed by UNAC.

Under the banner of adapting the criminal justice system to the principles of transitional justice, the 2012-2013 conjuncture of forensic reform created two important sites of forensic experimentation whose impact transcended the project of accountability for peacemaking. As described in detail in Part II of this chapter, one of these sites – PEF – emerged within the conjuncture of “financial turbulence” that followed the collapse of Interbolsa. At PEF, a new type of expertise concerned with various forms of risk analysis was integrated into the work of criminal investigation. The emergence of PEF effectively enabled an alignment between financial and forensic expertise that I have described as the financialization of forensic knowledge.

Many of the accounts of the transformation of Colombia’s forensic knowledge production in preparation for the peace agreement reproduce the siloing between finance and political transition by seeing PEF and UNAC as two wholly unrelated projects. Instead, this chapter considers them in relation to one another: on the one hand, forensic financial expertise in the aftermath of financial catastrophe and, on the other, criminal justice reform for political transition. In doing so, the chapter shows how a formation of forensic knowledge centered on financial risk emerged from the alignment of financial catastrophe and political transition. By holding finance, political transition, and forensic knowledge in relation to one another my goal in
the remaining chapters of the dissertation is to explore what their alignment might reveal about the present.\footnote{Short final footnote about symmetry between contextualization and conjunctural analysis.}