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# Social Capital in the Arbitration Market: Network Analysis and International Investment Law

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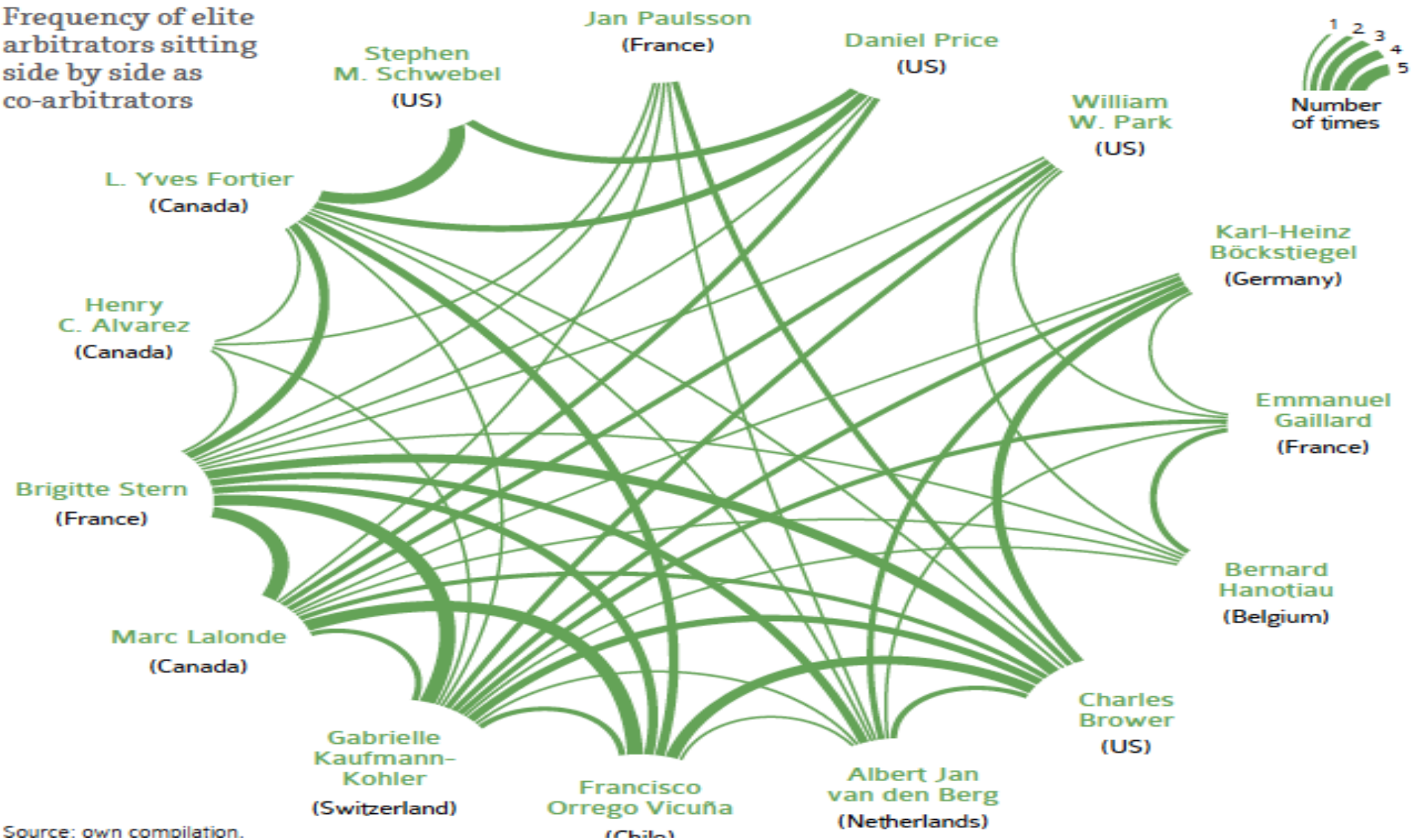
# PROBLEM

IMAGE 1

Frequency of elite arbitrators sitting side by side as co-arbitrators




Source: own compilation.

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# MECHANISM

- Competing Explanations:
  - *Garth/Dezaley*: symbolic capital (*e.g.,* authority, knowledge, prestige & reputation) to increase social standing.
  - *Ginsburg*: insiders use information asymmetries & barriers (*e.g.,* culture) to keep newcomers out of network.
  - *Shalakany*: institutions form a web of structures designed to exclude dissent in global governance.

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# QUESTIONS

- What are the basic characteristics of the social structure of the arbitration network?

- What can we learn (if anything) from these characteristics about the potential mechanism of exclusion of non-elite actors?

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# NETWORK ANALYSIS

- The Basics
  - Representation of the relationships between units.
  - Components of a system rarely act in isolation.
  - Network structures affect outputs.

- Prior Use in Legal Scholarship
  - How academia ‘infects’ judicial outputs.
  - How legal precedent ‘develops’ over time.
  - How ‘social esteem’ is distributed among judges.

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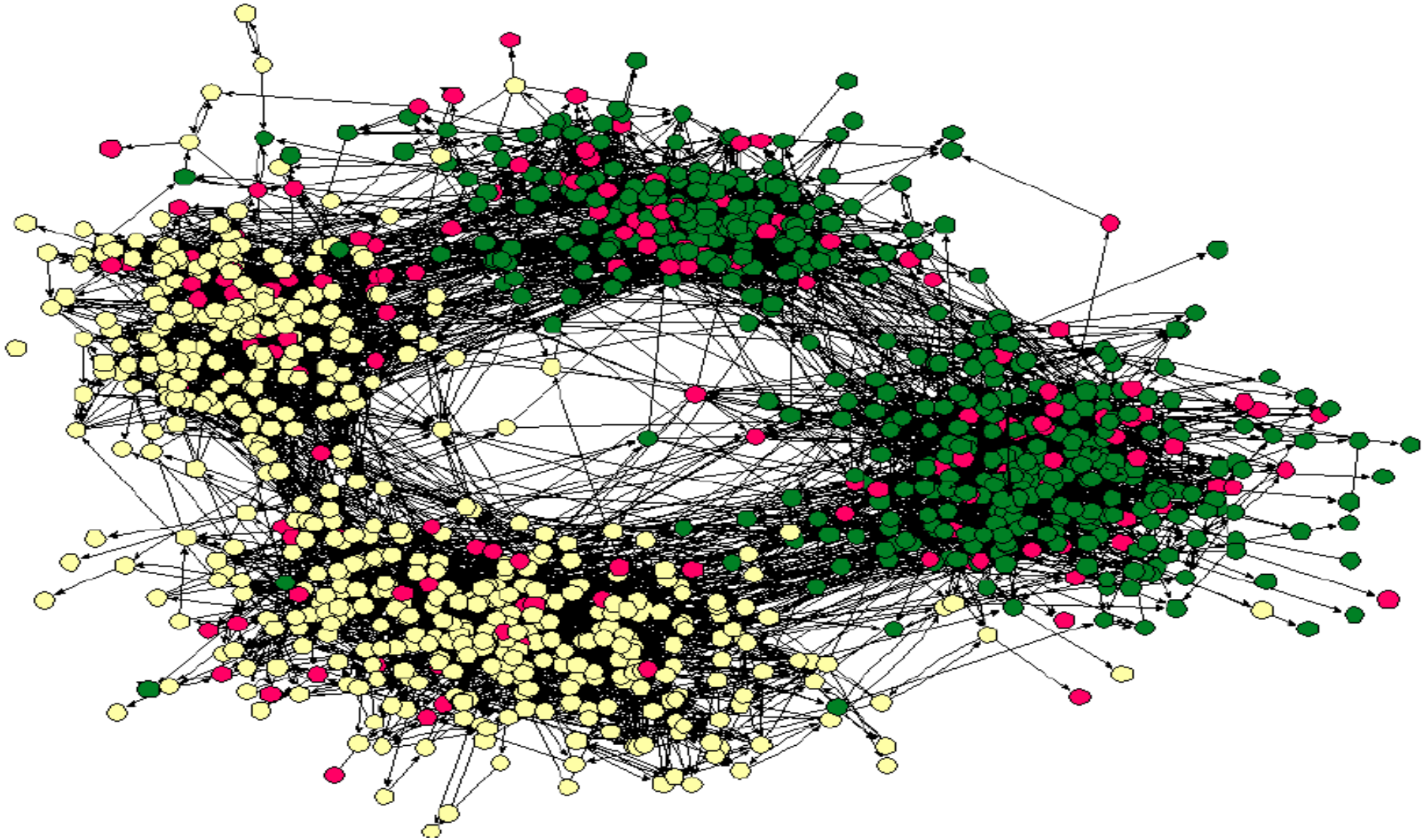
# SCHOOL'S NETWORK



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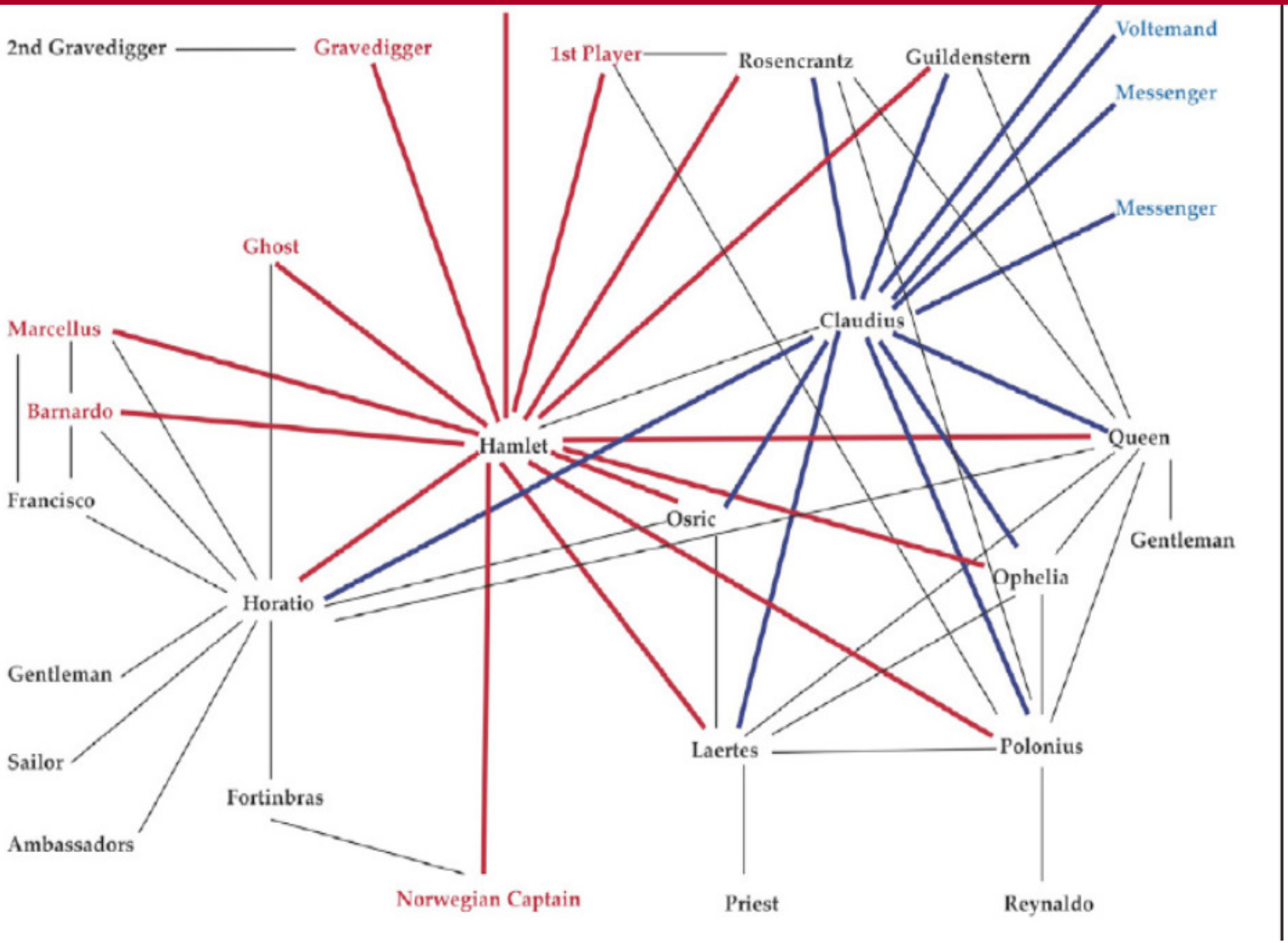
# HAMLET'S NETWORK



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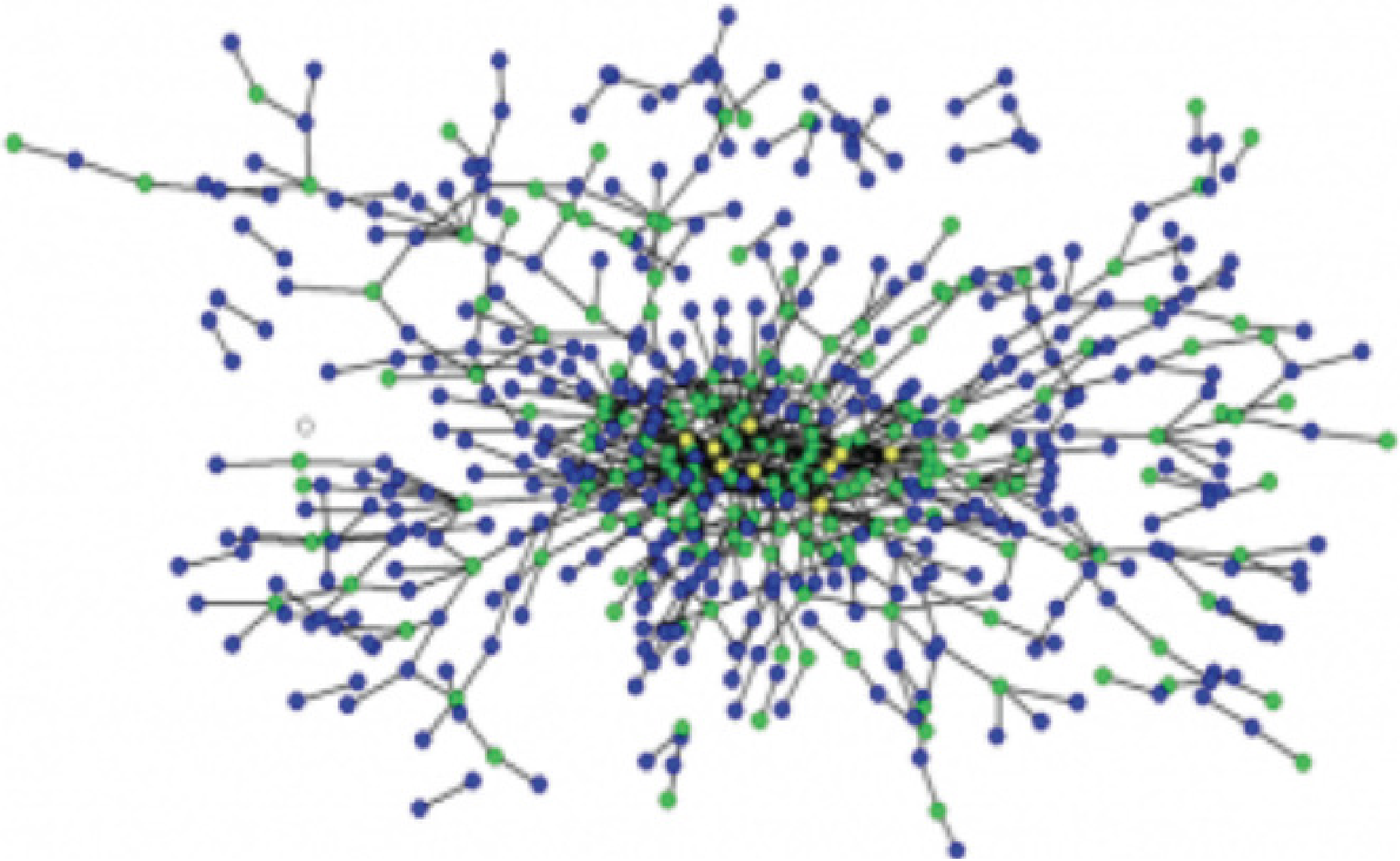
# NETWORK AMERICAN JUDICIARY



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# SURVEY DESIGN

- All appointments to ICSID tribunals (1972-2014)
  - Operationalizes social standing and basic structure.
  - Complete data-set of appointments (1463).
  - Arbitrators are *nodes* and appointments are *ties*.
- Semi-structured interviews.
  - 12 arbitrators.
  - 25 practitioners in the field.

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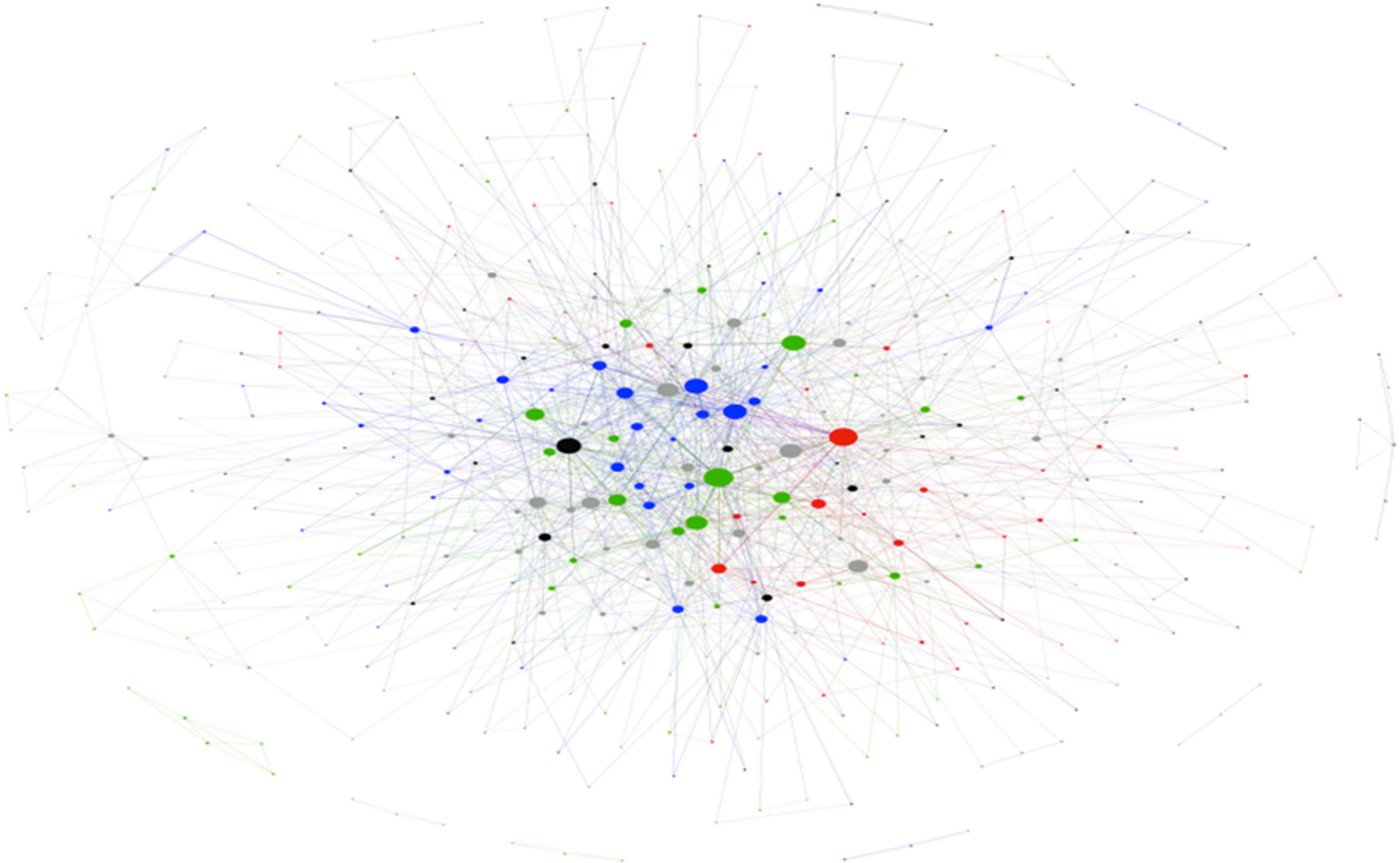
# ICSID NETWORK (REGION)



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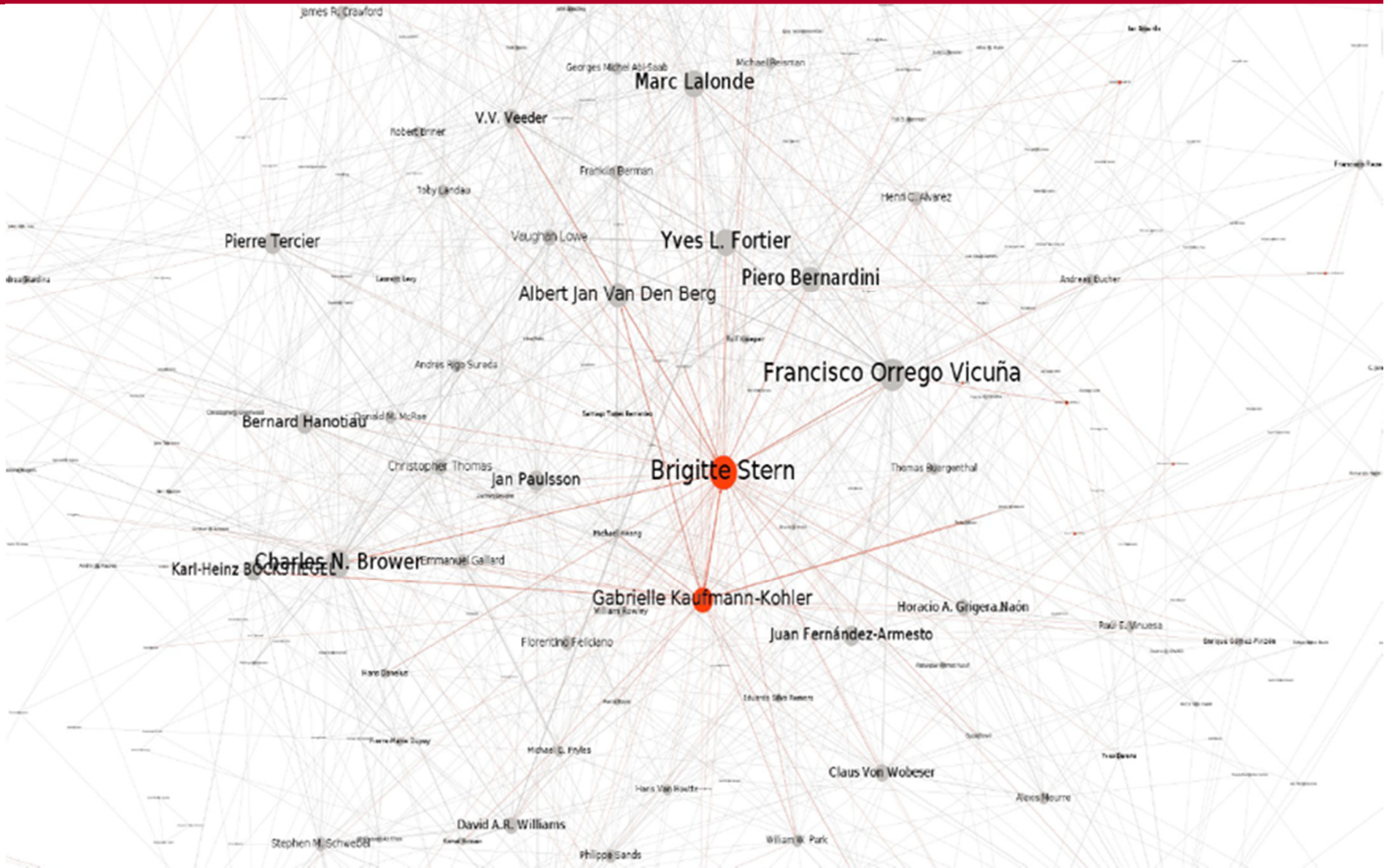
# ICSID NETWORK (GENDER)



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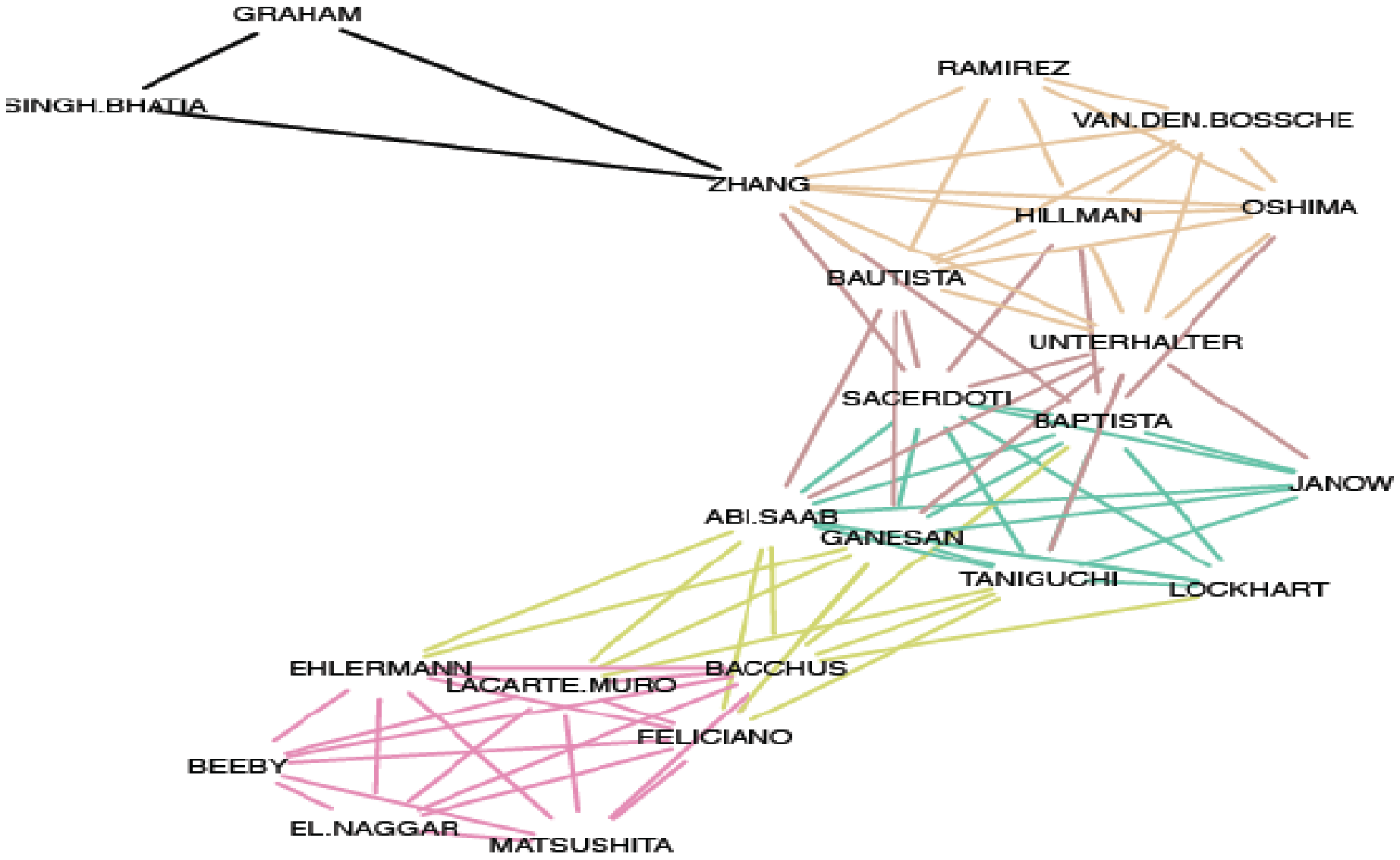
# WTO-AB's NETWORK (EPOCHS)



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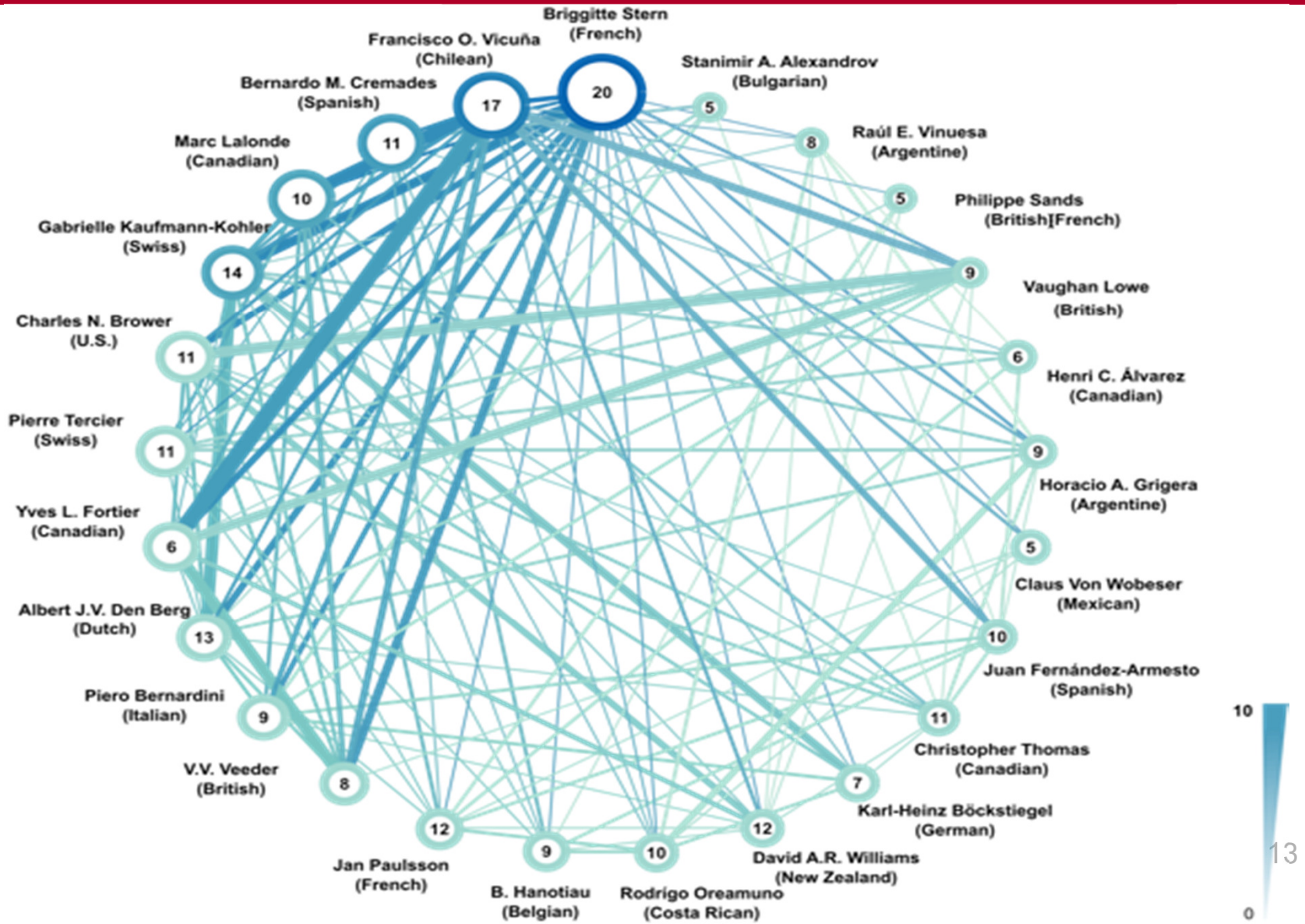
# CORE OF ICSID NETWORK



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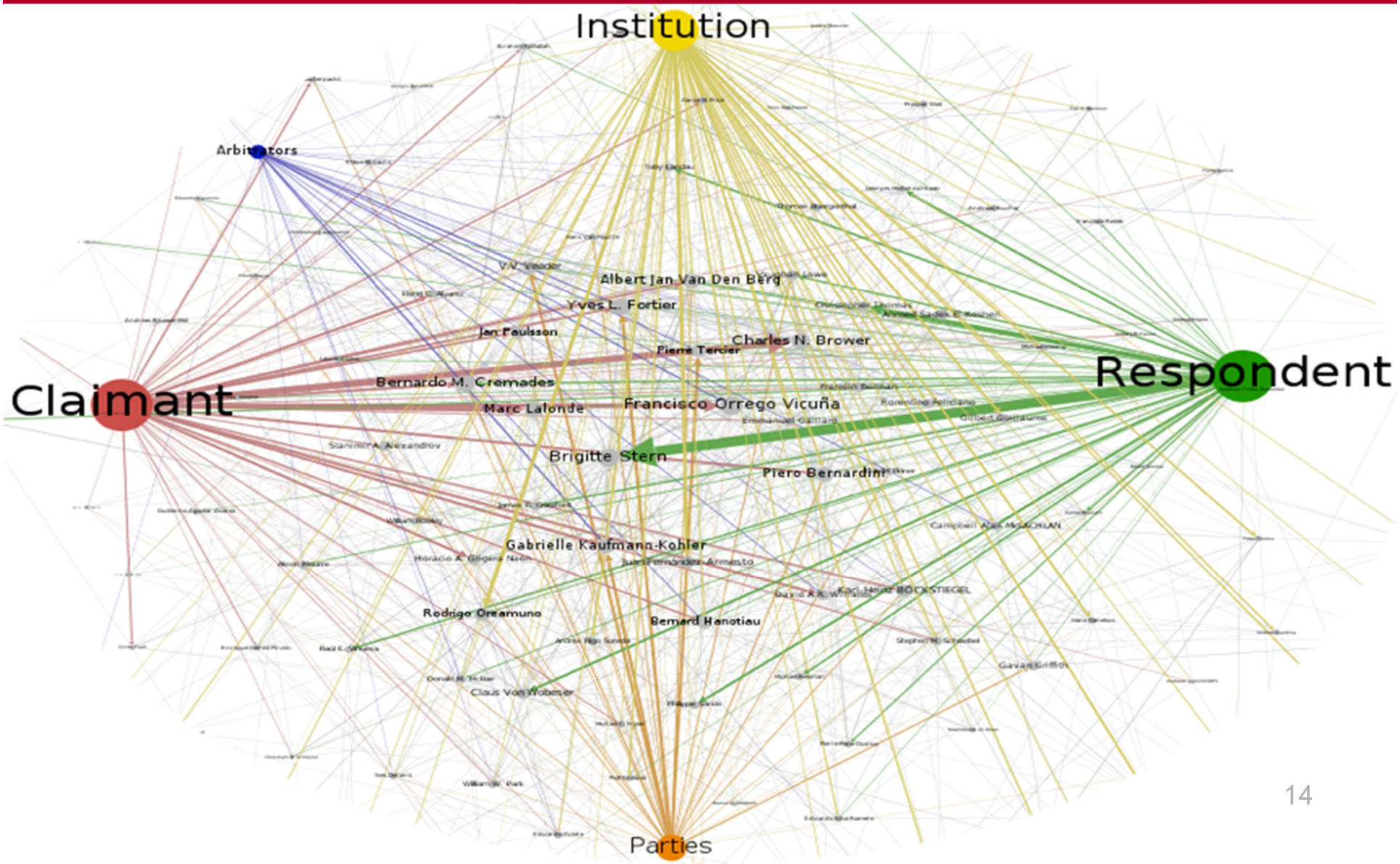
# ICSID NETWORK (METHOD)



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# POWER-BROKERS

| Rank | Degree | Score | Eigenvector | Score | Betweenness | Scor |
|---|---|---|---|---|---|---|
| 1 | STERN | 47 | STERN | 1 | CREMADES | 5912.08 |
| 2 | ORREGO VICUNA | 43 | ORREGO VICUNA | 0.8158 | STERN | 5393.54 |
| 3 | CREMADES | 42 | FORTIER | 0.7834 | ORREGO VICUNA | 4956.11 |
| 4 | BERNARDINI | 39 | KAUFMANN-KOHLER | 0.6663 | FORTIER | 4324.56 |
| 5 | KAUFMANN-KOHLER | 38 | BROWER | 0.6038 | BERNARDINI | 3951.56 |
| 6 | FORTIER | 37 | VEEDER | 0.555 | VAN DEN BERG | 3792.21 |
| 7 | BROWER | 37 | LOWE | 0.5493 | KAUFMANN-KOHLER | 3691.53 |
| 8 | LALONDE* | 36 | LALONDE* | 0.5203 | BOCKSTIEGEL | 3686.74 |
| 9 | VAN DEN BERG | 36 | VAN DEN BERG | 0.5186 | TERCIER | 3682.14 |
| 10 | OREAMUNO | 33 | BERNARDINI | 0.4799 | LALONDE* | 3611.99 |
| 11 | TERCIER | 32 | WILLIAMS | 0.4286 | OREAMUNO | 3436.45 |
| 12 | BOCKSTIEGEL | 30 | CREMADES | 0.4005 | EL-KOSHERI | 3116.53 |
| 13 | PAULSSON | 28 | PAULSSON | 0.3358 | PAULSSON | 3074.77 |
| 14 | HANOTIAU | 26 | BOCKSTIEGEL | 0.333 | LAUTERPACHT* | 2964.49 |
| 15 | EL-KOSHERI | 26 | EL-KOSHERI | 0.3146 | BROWER | 2679.78 |
| 16 | VEEDER | 24 | THOMAS* | 0.3051 | MBAYE | 2665.04 |
| 17 | FERNANDEZ-ARMESTO | 24 | BERMAN | 0.2804 | GIARDINA | 2357.42 |
| 18 | WILLIAMS | 24 | GRIGERA NAON | 0.2734 | ALEXANDROV | 2158.00 |
| 19 | VON WOBESER | 23 | TERCIER | 0.2696 | HANOTIAU | 2136.36 |
| 20 | GUILLAUME | 22 | BRINER | 0.2642 | VEEDER | 1902.87 |
| 21 | ALVAREZ* | 22 | OREAMUNO | 0.2585 | ALVAREZ* | 1879.74 |
| 22 | CRAWFORD | 22 | VON WOBESER | 0.2581 | FADLALLAH | 1798.37 |
| 23 | LOWE | 21 | FERNANDEZ-ARMESTO | 0.2343 | LOWE | 1737.73 |
| 24 | BERMAN | 21 | CAFLISCH | 0.2343 | BERMAN | 1603.00 |
| 25 | THOMAS* | 21 | PARK | 0.2237 | GUILLAUME | 1548.46 |

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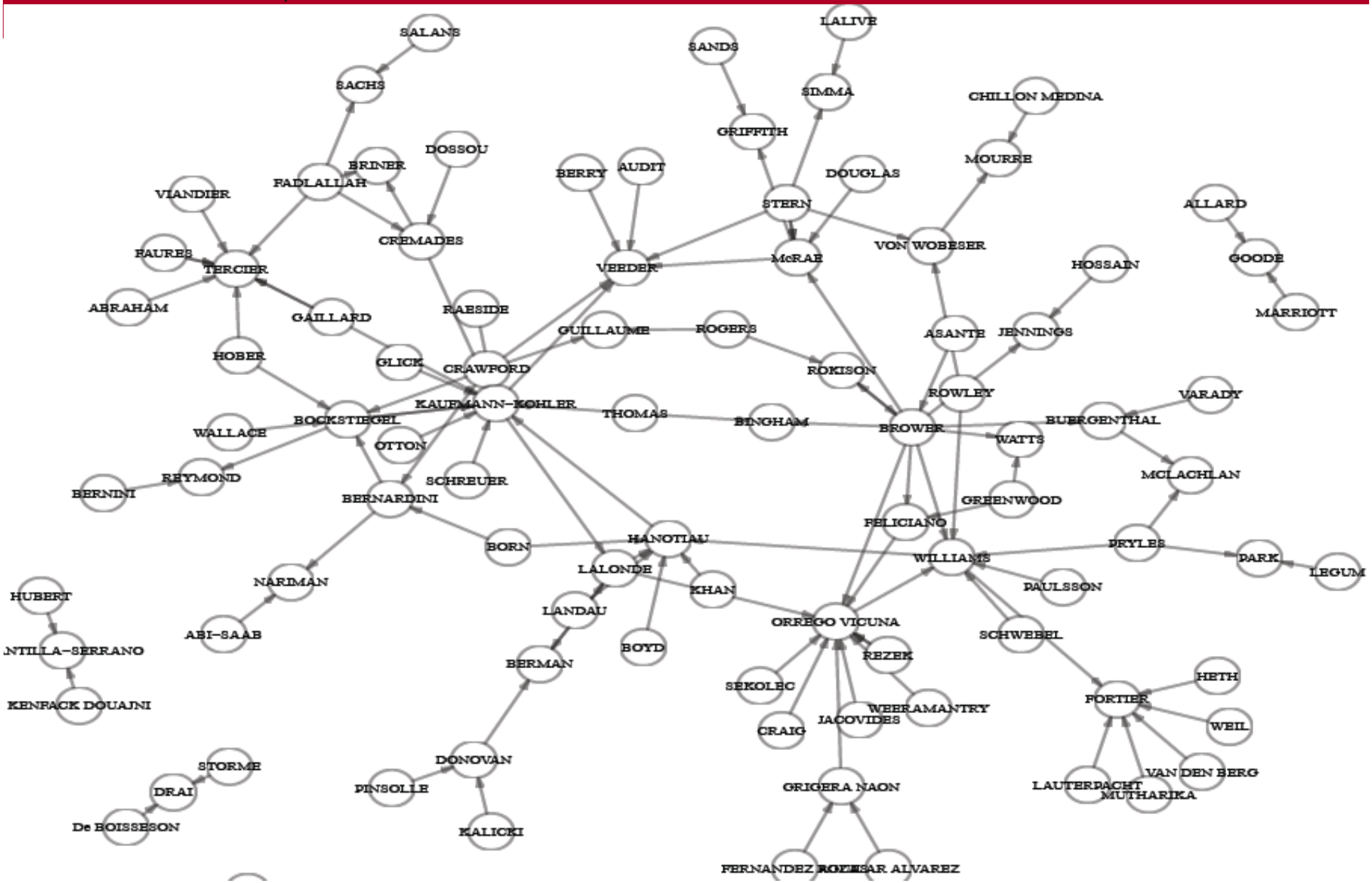
# NETWORK SOCIOGRAM



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# AUTHORITY AND HUB

| Rank | Authority | Score | Hub | Score |
|---|---|---|---|---|
| 1 | KAUFMANN-KOHLER | 1 | BROWER | 1 |
| 2 | ORREGO VICUNA | 0.94 | GAILLARD | 0.88 |
| 3 | TERCIER | 0.93 | BOCKSTIEGEL** | 0.67 |
| 4 | McRAE | 0.4 | REZEK | 0.58 |
| 5 | WILLIAMS | 0.35 | FAURES | 0.57 |
| 6 | BINGHAM | 0.31 | FADLALLAH | 0.4 |
| 7 | WATTS | 0.26 | THOMAS | 0.4 |
| 8 | FELICIANO** | 0.26 | CREMADES** | 0.36 |
| 9 | BUERGENTHAL | 0.24 | LALONDE | 0.36 |
| 10 | JENNINGS | 0.24 | STERN | 0.35 |
| 11 | ROKISON | 0.24 | HOBER | 0.32 |
| 12 | BRINER | 0.17 | GLICK | 0.31 |
| 13 | REYMOND | 0.16 | HANOTIAU** | 0.31 |
| 14 | VEEDER | 0.14 | OTTON | 0.31 |
| 15 | HANOTIAU** | 0.12 | RAESIDE | 0.31 |
| 16 | VON WOBESER | 0.11 | SCHREUER | 0.31 |
| 17 | BOCKSTIEGEL** | 0.11 | WEERAMANTRY | 0.29 |
| 18 | CREMADES** | 0.09 | FELICIANO** | 0.29 |
| 19 | SACHS | 0.09 | GRIGERA NAON | 0.29 |
| 20 | BERMAN | 0.08 | CRAIG | 0.29 |
| 21 | SIMMA | 0.08 | ABRAHAM | 0.29 |
| 22 | GUILLAUME | 0.04 | JACOVIDES | 0.29 |
| 23 | BERNARDINI | 0.03 | SEKOLEC | 0.29 |
| 24 | MCLACHLAN | 0.03 | VIANDIER | 0.29 |
| 25 | PARK | 0.03 | GREENWOOD | 0.16 |

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# FINDINGS

- "grand, old men" or "arbitration technocrats"?
  - Is dominated by Europe, Canada, NZ and Australia, however, a Chilean is a male with the highest level of centrality and very few Americans top the list.
- "white, male club"?
  - Is a male-dominated field, however, two women are amongst the most central in the field.
  - "a transnational mafia"?
  - Heavily interconnected and cohesive core. However, it follows the dynamics of reputation-based networks & preferential attachment process.

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# FINDINGS

| Number of Ties | % of Network | Mean # of Ties |
|---|---|---|
| -Power-Brokers > 20 ties | 6.7% | 28.5 |
| -Elite-Arbitrators >10 ties | 9.4% | 15 |
| -Repeat-Players > 2 (or 3) ties | 32.3% | 5 |
| -Single-Shooters | 51.6% | 2 |

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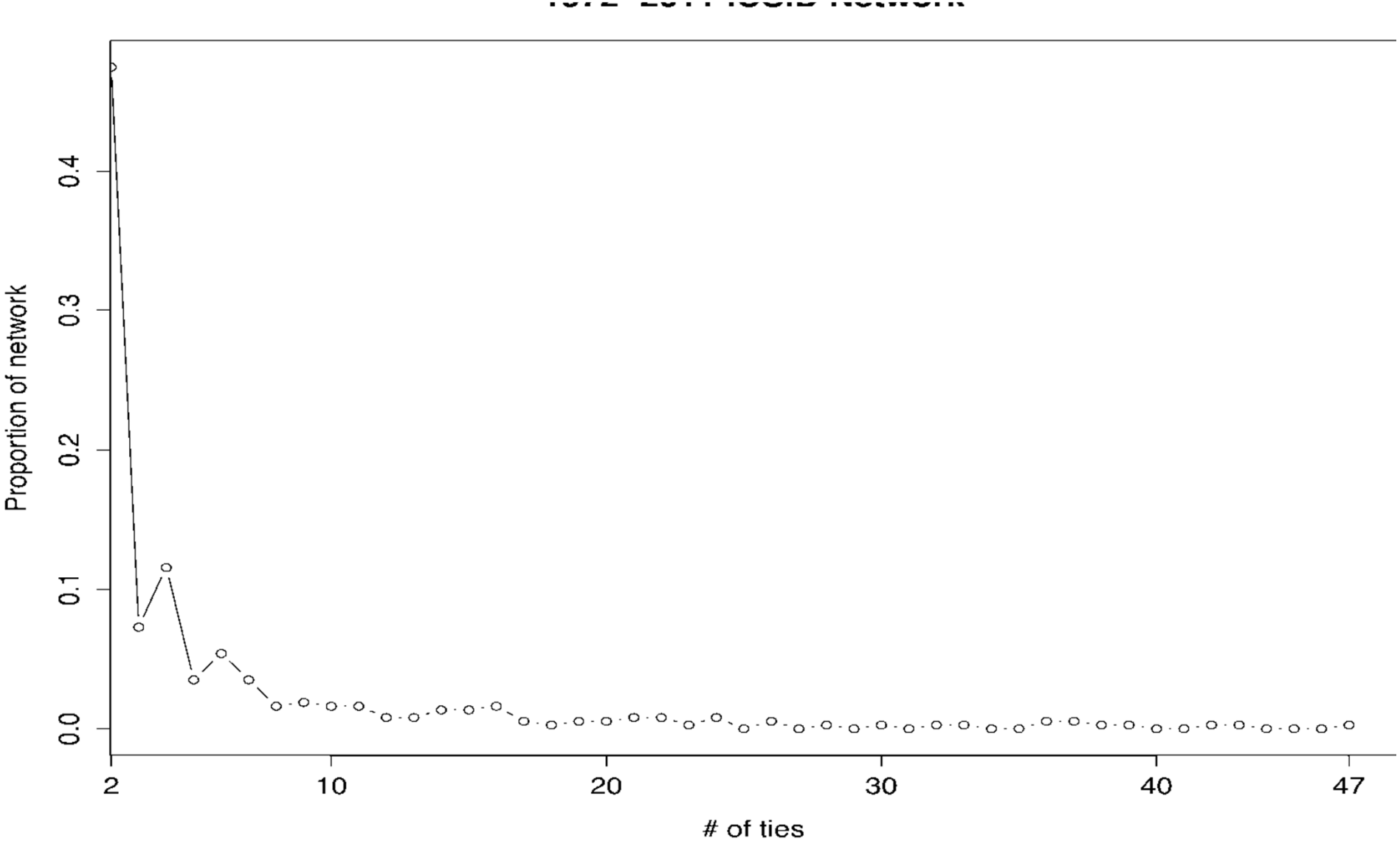
# FINDINGS



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# IMPLICATIONS

- Arbitrators appointed early on subsequently benefit from social standing.
  - Central arbitrators may benefit from limited cognitive ability and an overly cautious culture (possibly resulting in heuristics biases).
- To affect the gender composition an Secretariat interention won't be sufficient.
  - These types of networks require "coordinated attacks". Similar structures are very resistant.

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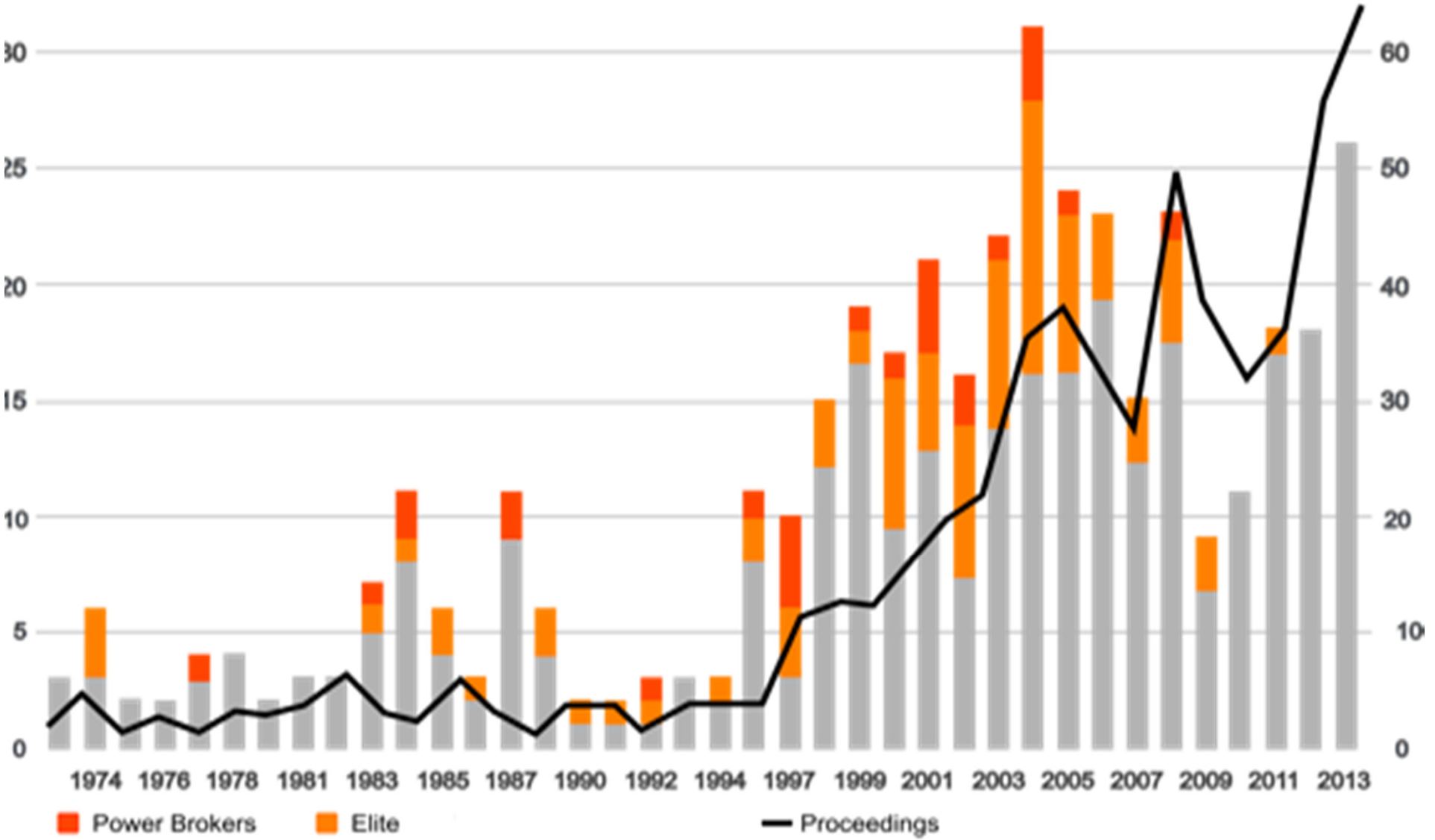
# IMPLICATIONS



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# IMPLICATIONS

- Appointment as a Mechanisms of Signaling of Social Esteem.
  - *Daphna Kapeliuk*, there is a "lack of tendency of party-appointed arbitrators to display bias in favor of the appointing party through dissents."
  - *Eric Schwartz*, "it's hard to get publicity for commercial arbitration work because of confidentiality. With investment arbitrations, you can boast."

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# APPLICATIONS OF NETWORK ANALYSIS IN THE FIELD

- The study of precedent in investor-state arbitration.
- Cross-pollination and convergence between different legal systems.
- Understanding *de facto* hierachy of international courts.
- Preventing redundancies in international law.

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# THANK YOU