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From Custom to Court: The Evolution of Mediation in European Legal Systems

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ABSTRACT

This article traces how European mediation has repeatedly rebalanced three variables—(1) the source of mediator authority, (2) the degree of institutionalization, and (3) the operative meaning of voluntariness—from antiquity to the present. Using three periods—Proto-Mediation (c. 500 BCE–c. 1750), Classical Mediation (c. 1750–1976), and ADR-Era Mediation (1976–present)—it shows how authority migrated from communal standing to professional or court-adjacent credential; how informal practice became standardized procedure; and how voluntariness shifted from social expectation to legally managed participation (sometimes via “mandatory” gateways). The analysis explains contemporary court-connected designs as the latest turn in a long European cycle and offers a historically grounded synthesis centred on the authority–institutionalization–voluntariness triad. How have authority, institutionalization, and voluntariness been historically reconfigured in European mediation, and what do these recurrent configurations imply for the design and legitimacy of contemporary court-connected mediation?

1 | Introduction

Defining a concept with a long and complex history is inherently challenging. Nietzsche aptly noted, “Only something which has no history can be defined” (Nietzsche 1913). A historical lens reveals the flexibility and evolution of social phenomena, showing their adaptability to societal demands and shaping societal structures.

As mediation becomes integrated with judicial systems, its definition grows more complex. This rapid transformation raises a crucial question: what constitutes the essence of mediation beyond its current national implementations? Instead of fixed dictionary definitions or context-limited authoritative sources, this article adopts a historically grounded approach. Tracing mediation's evolution reveals core traits that endure and others shaped by socio-legal shifts. This method allows for a deeper

understanding of mediation not as a static legal tool, but as a dynamic and context-sensitive practice.

The article explores historical shifts in mediator authority, institutionalization, voluntariness, and resultant court-connection patterns. The aim is to provide a historically grounded framework that explains the present design choices in court-connected mediation without reducing them to country-specific trajectories.

The triad is chosen because it captures the minimum set of variables that repeatedly determine whether “mediation” operates as a social practice, a legal procedure, or a court-adjacent institutional technology. Many familiar mediation values—neutrality, confidentiality, informality, self-determination—are not independent variables across time: they are downstream properties that expand or contract depending on how authority is sourced,

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how tightly the process is institutionalized, and how participation is structured. Analytically, the triad therefore avoids definitional circularity (defining mediation by today's normative aspirations) and makes historical comparison possible across jurisdictions that used different vocabularies for conciliatory justice.

Practically, the triad has direct implications for institutional design. Contemporary controversies around mandatory information sessions, cost sanctions, judicial steering, and enforceability of settlements can be reframed as questions about (i) how far court-adjacent authority may legitimately shape party behaviour, (ii) which forms of institutionalization stabilize quality without proceduralizing the process into quasi-adjudication, and (iii) what safeguards preserve a meaningful, not merely formal, voluntariness. The historical analysis is therefore offered as a design-relevant diagnostic rather than as an antiquarian description.

The article makes three key contributions. First, it provides a Europe-wide synthesis that treats Europe as a shared legal-cultural space, moving beyond the prevailing country-by-country literature. Second, it introduces an original periodization for analysing the evolution of mediation across Europe. Third, it reconsiders the historical interplay between mediation practices and judicial authority preceding the ADR-Era mediation, arguing that the roots of institutionalization reach further back than commonly assumed.

A deliberately synoptic perspective is adopted. Rather than offering a further jurisdiction-specific account at the level of doctrinal detail, it seeks to identify recurrent structural configurations in the European development of mediation over a long time horizon. The point of the wide temporal span is therefore analytical: it enables comparison across periods in which mediation is embedded in very different institutional environments, making visible patterns that are obscured when the literature is organized primarily around national reforms, sectoral schemes, or short policy cycles. The claims advanced are correspondingly structural and limited: the analysis does not aim at exhaustive coverage of every jurisdiction or episode, but at a coherent account of how shifts in authority, institutionalization, and voluntariness repeatedly re-shape what mediation is taken to be.

Cultural variations across Europe further complicate mediation practices, as differing norms and values influence how parties approach the process. Joel Lee's work on cross-cultural mediation stresses the need for cultural sensitivity, especially in cases involving parties from diverse backgrounds (Lee 2016). As mediation becomes institutionalized across Europe, mediators must ensure that the process remains adaptable to varying legal and social contexts.

This study surveys the development of mediation in Europe from ca. 500 BCE, when records of consensual settlement appear in Greek and Roman sources, to the early 21st century, when ADR-Era reforms have embedded mediation in national procedural codes. Using Koselleck's experience/expectation pair as an operational heuristic, I locate period shifts where accumulated practice no longer matches disputants' expectations—typically coinciding with changes in authority sourcing,

institutionalization, or voluntariness. This lens is strictly operational: it helps mark when moves toward standardization, court-connection and enforceability are triggered without importing anachronistic categories (Koselleck 2004). Against this backdrop, scholars of alternative dispute resolution have long insisted that present-day ADR cannot be understood without a diachronic lens (Hopt and Steffek 2013; Sander 1985). Accordingly, this article distinguishes three analytically discrete phases. Proto-mediation encompasses the informal, community-centred practices documented, for instance, in early-medieval Europe (Davies and Fouracre 1992) and in the customary jurisdictions (Lovin 1984). For the purposes of this study, the expression “proto-mediation” is used solely as a heuristic category. The practices subsumed under it are not identical to modern mediation; rather, they were early conciliatory mechanisms whose orientation toward reconciliation, voluntary engagement and communal harmony foreshadowed the doctrinal attributes later formalized in classical mediation. Although the same practices also provided procedural and intellectual impulses for adjudicative, arbitral and hybrid pathways, tracking those parallel developments lies beyond the scope of the present article; the analysis that follows therefore concentrates on the specific continuities that connect these pre-modern conciliatory forms to the subsequent evolution of mediation as a discrete legal institution within Europe. The passage from proto-mediation to classical mediation is marked by the displacement of community-based authority by state-adjacent procedures and credentials. Classical mediation designates the semi-formal conciliation procedures that flourished from the late eighteenth to the early twentieth century, such as the justice de paix in France and the Scandinavian conciliation boards (Nylund et al. 2018; Petit 2003). This classical consolidation provides the point of transition to the subsequent court-influenced phase. ADR-Era mediation, finally, refers to the professionalized and often court-connected model promoted after the Pound Conference of 1976 and consolidated through instruments like the 2008 EU Mediation Directive (N. Alexander 2019; Riskin 2001). As used here, “ADR-Era” designates this historically subsequent phase, characterized by professionalization, standardization, court-connection and the availability of enforceable settlements; the label is employed descriptively and without any claim to canonical status in the literature. This article adopts a chronological structure not as a definitive model, but as a heuristic tool. Similar approaches—such as Nolan-Haley's periodization of U.S. court mediation or Macfarlane's analysis of evolving legal roles—demonstrate how temporal framing can help illuminate broader patterns of institutional and professional change (Macfarlane 2017; Nolan-Haley 1996)—confirms the analytic utility of a stage-based framework. The tripartite typology proposed here—distinguished primarily by the evolving role and authority of the mediator, the level of institutionalization, and the nature of voluntariness—thus functions as an interpretative scaffold that clarifies why and how mediation's authority base, procedural form, and normative purpose have successively shifted within the European legal tradition.

This article asks how, across European legal cultures, mediation has recurrently been reconfigured by three variables: the sources of mediator authority, the degree and modalities of institutionalization, and the operative meaning of voluntariness. It traces (i) how authority shifts as mediation moves

from community practice to court-adjacent design; (ii) which historical mechanisms render mediation procedurally legible and professionally organized, and how these mechanisms transform the character of the process; and (iii) how voluntariness is repeatedly re-specified—from socially expected participation to formally voluntary yet institutionally channelled engagement—and what that genealogy suggests for contemporary debates on court-connected programmes and mandatory gateways. The core claim is that European mediation does not develop along a linear axis from “informal” to “formal”. Instead, historically distinct configurations of authority, institutionalization, and voluntariness generate recurrent design tensions that re-emerge in modern practice, particularly once authority becomes court-adjacent and institutionalization deepens.

Current policy debates often treat court-connected mediation as a recent innovation and frame mandatory gateways as exceptional departures from a voluntary ideal. The long-run European record complicates that story. It shows that hybridity is recurrent: mediation has repeatedly been used to manage the boundary between communal ordering and public adjudication. Recognizing the recurring coupling between authority and institutionalization helps practitioners and policy-makers identify where voluntariness is most likely to become fragile, and where safeguards must be designed as structural features rather than as aspirational ethical statements.

2 | Literature Review

Rather than reproducing doctrinal or national silos, the review re-indexes prior work to the triad, exposing where authority, institutionalization or voluntariness are assumed rather than analysed. A commonly accepted definition of mediation today, outlined by the Advisory, Conciliation, and Arbitration Service, highlights the mediator’s impartiality, focusing on helping parties achieve a resolution without dictating the outcome (ACAS and Trades Union Congress (TUC) 2010). This definition reflects the principles of classical mediation, focused on neutrality and voluntary participation. However, in the foundational practices that laid the groundwork for classical mediation, those who facilitated dispute resolution were often not impartial; rather, they acted as authoritative intervenors, upholding shared community norms and maintaining social order. With mediation’s growing integration into formal judicial systems in the ADR-Era, these foundational principles—particularly impartiality and voluntariness—face challenges as mediation becomes increasingly professionalized and court-aligned, sometimes prioritizing settlement over community-based facilitation. Research highlights tensions between voluntary participation and mandatory mediation schemes, noting potential threats to party autonomy (Jaspers 2019).

Paul Schiff Berman’s analysis of legal pluralism highlights how the integration of informal justice mechanisms, such as mediation, within formal legal structures challenges conventional ideas of legal formalism and the judiciary’s traditional role (P. S. Berman 2012). Prior work argues mediation space design affects perceived neutrality, inclusivity and voluntariness (Lindsey 2022).

While mediation is frequently portrayed in the literature as an ancient and autonomous mode of dispute resolution with cross-cultural resonance (Antonello 2014; Auerbach 1983; Merry 1988; Pera 2014) scholarly accounts tend either to concentrate on its modern reinvention through the global ADR movement (e.g., Menkel-Meadow 1995; Sander 1985) or to present fragmentary historical sketches with limited analytical depth. More detailed studies often focus on national trajectories—(e.g., Ficcarelli 2020; Petit 2003)—without exploring the broader historical patterns that connect various European jurisdictions. In contrast, this article offers a regionally grounded perspective by examining the evolution of mediation specifically within Europe, not merely as a shared legal instrument, but as a phenomenon shaped by distinct socio-legal traditions, institutional transitions, and cultural imperatives—a methodological stance consonant with Max Weber’s heuristic of ideal types (Weber 1978) and Reinhart Koselleck’s notion of shifting temporal strata (Koselleck 2004). This approach illuminates the continuities and discontinuities that have marked the development of mediation across the continent (N. Alexander 2019; Riskin 2001). In doing so, it seeks to move beyond both universalist accounts and isolated national case studies, offering instead a comparative and historically situated analysis of European mediation as a dynamic and context-sensitive legal form, in line with recent calls for a continent-wide synthesis (Bonafe-Schmitt and Jullion 2024; Hopt and Steffek 2013). Understanding the historical evolution of mediation clarifies how past practices inform current challenges.

3 | Methodology

Methodologically, the secondary literature is read against three analytic comparators—authority, institutionalization, and voluntariness—which function as heuristic lenses rather than as a formal content-analysis coding scheme. The article employs a qualitative historical-comparative and doctrinal research design to investigate the evolution of civil mediation in Europe. It draws exclusively on published secondary sources—primarily legal history monographs, doctrinal analyses, and comparative law scholarship—selected based on three criteria: (i) relevance to one or more of the three analytic dimensions (mediator authority, institutionalization, voluntariness); (ii) coverage of developments within a definable legal culture in Europe; and (iii) fit within the tripartite periodisation (Proto-Mediation/Classical Mediation/ADR-Era Mediation) constructed by the author. The analysis is interpretive and historical-comparative: it does not claim dataset-style coding, frequency counts, or software-assisted content analysis. The triad is used to structure comparison across periods and legal cultures and to keep the synthesis analytically cumulative rather than purely narrative. While primary archival materials are not used, the secondary literature is treated as a proxy for evolving legal conceptualisations and institutional practices. Table 1 sets out the operational meaning of the three analytic comparators and the indicative markers used when reading the secondary literature.

The study adopts a heuristic, ideal-typical approach informed by Max Weber’s method of abstraction and Reinhart Koselleck’s theory of legal temporality. Legal practices are analysed not for their doctrinal content alone, but as reflections of broader shifts

TABLE 1 | Analytic framework for comparing mediation across periods.

	Operational definition (what is being compared)	Indicative markers in the secondary literature (what is treated as an indicator)	Analytic payoff (what the comparator helps you show)
Authority	The source and mode of legitimacy through which a third party may steer, frame, or influence dispute resolution (social, religious, professional, or state-linked).	The identity of the third party and the mode of appointment/selection (for example, status-based elder, clergy, professional mediator, judge-adjacent neutral); the justificatory basis of legitimacy (custom, moral or religious standing, public office, accreditation/registration, procedural mandate); the form of intervention implied by the attributed legitimacy, ranging from facilitative conduct to more evaluative or directive intervention (including proposing terms, steering outcomes, or leveraging litigation “shadow” consequences).	Makes visible shifts from communal or status-based legitimacy to professionalized and/or court-adjacent authority; explains why superficially similar practices differ in normative force, compliance expectations, and rights-sensitivity.
Institutionalization	The degree to which mediation-like practices are embedded in formal legal or administrative structures and stabilized through rules, procedures, and enforceability mechanisms.	The presence of formal procedural features (written steps, timelines, record-keeping); organizational embedding, as practices move from community forums to guild/church settings, to administrative bodies, and ultimately to court-connected pathways; professional infrastructure (training standards, ethical codes, rosters, monitoring); legal effects of outcomes (recognition of settlements, routes to enforceability, linkage to litigation).	Tracks movement from informal, local and relational practices to standardized processes that are transferable and legally legible; helps explain qualitative changes in “mediation” once it becomes routinized and/or court-connected.

(Continues)

TABLE 1 | (Continued)

	Operational definition (what is being compared)	Indicative markers in the secondary literature (what is treated as an indicator)	Analytic payoff (what the comparator helps you show)
Voluntariness	The conditions of entry, participation and exit: how far parties' "choice" is genuine, structured, pressured, or legally constrained.	Entry mode (self-initiated participation, social expectation, institutional referral, mandatory information session, mandatory attempt); exit conditions (ease of withdrawal, reputational costs, cost consequences, procedural sanctions); the incentive architecture (fees, cost-shifting, case-management pressures, time limits); the practical meaning of consent, distinguishing formal consent on paper from consent shaped by power asymmetries, community norms, or judicial signalling.	Avoids a purely formal reading of "voluntary mediation"; shows how voluntariness may be reconfigured (rather than simply reduced) under institutionalization; links design choices to legitimacy and rights-implications.

in normative expectations, procedural rationales, and legal cultures. The sources are read through a periodised lens to identify patterned transformations across jurisdictions and eras. Rather than offering exhaustive national narratives, the analysis synthesizes transnational trends to construct a pan-European genealogy of mediation. Particular emphasis is placed on institutional transitions, legal framings, and conceptual tensions between informality and formalization, autonomy and authority.

The study's limitations include uneven historical coverage across jurisdictions. This challenge is addressed through triangulation of findings across legal systems and types of scholarship, prioritizing convergence and recurrence of patterns over isolated detail. The article aims to offer a coherent interpretative framework, not to capture every national variant.

4 | Findings

4.1 | Practices Laid the Groundwork for Classical Mediation: Proto-Mediation (c. 500 BCE–c. 1750)

Mediation first flourished in Europe as a community-driven practice long before states codified civil procedure. While local customs differed, a distinct set of historical practices laid the groundwork for what would become classical mediation. Five recurrent features define this formative period: community authority, informality and voluntariness, incipient state formalization, professionalization of mediators, and the gradual expansion of scope and enforceability. Together, these elements show a trajectory from pre-institutionalized practices toward structured classical mediation.

In this phase, authority is predominantly communal (status, reputation, religious or guild standing); institutionalization is low-to-moderate (local fora, customary procedures, uneven record-keeping), and voluntariness is practical rather than individualist: participation is often optional in form but strongly shaped by social expectation and relational costs. This configuration helps explain why early mediation could be both flexible and normatively forceful without resembling state adjudication.

Throughout the ancient and medieval periods, mediators derived legitimacy from communal standing rather than statute. In classical Athens, disputants selected *diaitētai* whose awards were binding by voluntary covenant, while Solon's sixth-century-BC arbitration reforms further encouraged non-adversarial settlement (Harris 2006; Todd 1993). In republican and early-imperial Rome, many private controversies were settled through *amicabilis compositio*—a consensual *transactio* brokered by a respected *amicus* or patron whose moral authority, rather than magisterial power, secured compliance (Metzger 2005). Anglo-Saxon "friendly and quiet" settlements and later English manorial courts likewise favoured consensual harmony over confrontation (Dawson 2013; Schofield 2002). Merchant guilds across Europe appointed *boni viri* to resolve commercial quarrels so that trade could continue undisturbed (Davies and Fouracre 1992). Nordic tings, Baltic village elders, and Caucasian, Armenian, Azerbaijani, and Ukrainian community leaders all performed analogous roles grounded in moral authority and local custom (Fidan 2022; Nylund et al. 2018;

Tvaronaviciene et al. 2022; Оганезова 2019). These traditions point to a recurrent European pattern of community-embedded third-party settlement. They also show variation in the bases of authority and in the degree of institutionalization: in some settings legitimacy rests mainly on status and local reputation, whereas in others it is reinforced by more structured roles, written records, or clearer links to formal adjudication. This variation affects compliance dynamics and the practical meaning of voluntariness, even where the basic settlement function is comparable. Across the continent, the mediator was a figure of trust whose primary goal was relational equilibrium; the community itself guaranteed compliance. This cluster of examples can be read through the authority–institutionalization–voluntariness triad (Table 1). Authority is mainly social and status-based, while formal institutionalization is limited, with compliance supported by community enforcement. Voluntariness is therefore practical rather than purely individual: participation may be framed as optional, yet shaped by strong expectations and the costs of refusal.

Procedurally, these early mechanisms were (a) informal in format, (b) flexible in remedies tailored to local needs, and (c) voluntary in the sense that participation was secured by social expectation rather than legal compulsion (Davies and Fouracre 1992; Harris 2006; Schofield 2002; Tvaronaviciene et al. 2022; Оганезова 2019). This combination nurtured a cultural assumption that parties could design their own solutions—an ethos that later clashed with emerging procedural uniformity.

The key point is that mediation-type processes did not, historically, exist in isolation from judicial or quasi-judicial authority. Across European legal cultures, such practices coexisted with, and often intertwined with, nascent adjudicatory structures. This continuity shows that the institutionalization of mediation revives, rather than disrupts, Europe’s long-standing blending of consensual and adjudicatory justice.

The transition from proto-mediation to classical mediation is best read as a shift toward standardization and legal legibility. In proto-mediation, third-party settlement—illustrated, e.g., by Azerbaijani elders—operated largely through local authority and pragmatic practice rather than through uniform procedural codes (Fidan 2022; Petit 2003). Classical mediation, by contrast, is exemplified by state-adjacent conciliators such as the French justices of the peace, and by court-linked conciliation pathways that rendered settlement procedures more regularized and repeatable (Fidan 2022; Petit 2003). One further marker is the embedding of mandatory conciliation prerequisites within civil-procedure architectures in parts of the German tradition (Vericel and Zwickel 2023). In parallel, the basis of mediator authority migrated from social reputation to professional credential: Armenia’s reliance on respected local intermediaries sits in tension with Ukraine’s EU-influenced trajectory toward legally trained mediators (Лукашевич 2024; Оганезова 2019). Where earlier settlements relied primarily on moral suasion and community enforcement, classical and later models increasingly made room for legally recognizable—and eventually enforceable—outcomes, a logic that becomes explicit in later Italian codification (Ficcarelli 2020). The payoff was greater predictability (including for cross-border exchange), but often at the

cost of attenuating the dense cultural bonds that had previously underwritten compliance.

Objectives expanded from local peace-keeping to legal finality. French conciliators still prized harmony, yet by the nineteenth century mediation also addressed urban commercial and even proto-criminal disputes. At the same time, feudal, tribal, or ecclesiastical courts—structures once difficult to distinguish from mediation—crystallized into centralized judiciaries (Allport 2016; Auerbach 1984; Davies and Fouracre 1992; Miranda 2014; Shapiro 1981). Legal pluralism persisted, but the line between judge and mediator sharpened as professional lawyers and written codes prevailed (H. J. Berman 1983; Diamond 1971; Merry 1988). Mediation and adjudication began as overlapping communal functions; state-building separated them, yet contemporary hybrid processes testify that the boundary remains porous.

Across two millennia, European mediation has repeatedly oscillated between communal custom and state formalism. Community authority, informality, and voluntariness formed the core; early modern governments adopted those strengths while imposing procedural order; classical mediation professionalized and expanded its remit without abandoning relational goals. Recognizing this cyclical pattern helps explain present controversies—particularly around compulsory programmes—and underscores why mediation endures: it flexibly reconciles evolving legal demands with the human desire for consensual, relationship-preserving justice. The triad helps explain the recurring movement between informality and juridification described here. As authority shifts from communal standing toward state-linked roles, mediation tends to become more procedurally legible, and institutionalization increases. Voluntariness is then re-described as “choice”, but the literature suggests that this choice is often shaped by procedural context and incentives.

5 | Classical Mediation Before the ADR Era (c. 1750–1976)

Classical mediation reflected socio-political and cultural dynamics in Europe, evolving alongside local customs and legal traditions as societies transitioned to more centralized systems. The analysis of classical mediation reveals several key aspects that highlight its role in shaping modern legal and social frameworks.

These continuities with nascent adjudicatory structures rendered the channelling of conciliation into court-adjacent fora a natural development. By the late eighteenth and nineteenth centuries, certain states began channelling communal conciliation into court-adjacent forums. France’s post-Revolution Justices of Peace institutionalized local amicable settlement (Petit 2003). In parts of the German legal space, semi-formal conciliation institutions operating under public oversight developed as a routine gateway for minor civil disputes, preserving voluntariness as to settlement while structuring parties’ access to adjudication through an expected (and, in some settings, required) attempt at conciliation (Klein 1995). Denmark’s 1795 royal resolution created conciliation boards, and Norway’s rural boards followed suit, both compelling parties to negotiate before trial

(Adrian 2014; Nylund et al. 2018). States embraced mediation to ease burgeoning dockets, yet retained the rhetoric of party autonomy—an ambivalence foreshadowing present debates on mandatory schemes.

Classical mediation re-sites authority closer to the state (local public office, legally recognized conciliators), increases institutionalization through standard steps and legal effects, and re-describes voluntariness as a procedural value even where participation is institutionally steered (mandatory preliminary conciliation, court-adjacent referral). The core tension is already visible: institutional legibility and enforceability grow, but the meaning of choice becomes increasingly contingent on procedural architecture.

At the heart of classical mediation lay the authority of the local collective. Mediators were chosen not for formal legal credentials but for their reputations as trustworthy elders, clergy, merchants, or village heads. Their power rested on the community's expectation that harmony should be restored without recourse to distant tribunals. Contemporary observers—from the Caucasus to the Baltic—recount how respected figures resolved quarrels precisely because they embodied prevailing social norms (Fidan 2022). The legitimacy of the process therefore preceded and ultimately outlived any state involvement.

Because legitimacy sprang from shared values rather than codified procedure, classical mediation remained strikingly informal. Sessions were often held in homes, squares, or parish halls; word-of-mouth rather than writs summoned the parties. Such elasticity allowed remedies to be moulded to local expectations of fairness, kept costs negligible, and protected poorer litigants from being priced out of justice. The Justices of Peace who proliferated after the French Revolution illustrate the point: they dispensed with lawyers wherever possible, privileged conversation over documents, and reserved the courtroom only for irconcilable cases (Jarvis 2018; Vericel and Zwickel 2023). Similar pragmatism can be traced in church-sponsored conciliation on the Italian peninsula, merchant guild arbitration in Hanseatic ports, and village gatherings in the Habsburg lands (Davies and Fouracre 1992).

Rather than adjudicating past wrongs, mediators sought to safeguard future co-operation. Restitution, apology, and face-saving compromises were favoured over winner-loser verdicts. This orientation reflected social and economic realities: neighbours, trading partners, and extended families had to live together long after the quarrel ended. Italian treatises on *componimento amichevole*—amicable settlement—explicitly framed the mediator's task as “repairing the social fabric” (Dalla Bontà et al. 2024). Comparable language recurs in Nordic records of conciliation boards and in Germanic statutes that obliged disputants to “seek agreement for the sake of the parish” before appearing in court (Nylund 2016).

As industrialization swelled dockets and nation-states consolidated power, governments gradually formalized what villages had long practised. Nineteenth-century German codes, for instance, made a preliminary attempt at conciliation a condition precedent to litigation, implicitly acknowledging that consensual settlements eased the administrative burden (Vericel and

Zwikel 2023). Across Europe, similar statutes did not displace community mediation; rather, they grafted it onto fledgling judicial hierarchies, converting local wisdom into an auxiliary stage of civil procedure (Petit 2003; Vericel and Zwickel 2023).

Once inserted into legal frameworks, mediation required transparent criteria for neutrality, confidentiality and enforceability. Training schemes, accreditation bodies and ethical guidelines appeared—in some regions earlier, in others only in the 21st century. Armenia's 2018 Law on Mediators exemplifies this long arc: by codifying rights and duties it transformed a moral calling into a regulated profession (Оранжева 2019). Comparable trajectories can be observed in Western Europe's bar-linked mediation institutes and Scandinavian court-connected services, all of which drew inspiration from older communal customs yet recast them to meet modern due-process standards (Adrian 2014; Allen 2019; Allport 2016).

Despite the drift toward uniform legislation, classical mediation never lost its sensitivity to local culture. Nordic conciliation boards emphasized egalitarian dialogue; Mediterranean practices leaned on honour and reconciliation; Central- and Eastern-European councils blended customary law with emerging civil codes (Adrian 2014). Such diversity underscores a key insight: mediation thrived precisely because it could absorb distinctive moral vocabularies, whether those revolved around kinship, faith, commerce, or civic republicanism.

Classical mediation represents an intermediary phase between informal, community-based practices and the structured frameworks that emerged under the influence of the ADR movement. Unlike proto-mediation, which relied on community norms and moral authority, classical mediation began to gain semi-official recognition, with respected local figures facilitating resolutions outside formal court systems. This phase introduced early elements of professionalization and procedural consistency, retaining voluntary participation and neutrality while aligning more closely with formal justice principles. As such, classical mediation laid essential foundations for mediation's eventual integration into judicial systems, preserving its collaborative nature while adapting to evolving legal demands. In this phase, authority is increasingly linked to legally recognized roles, even if local credibility remains relevant. Institutionalization grows through clearer procedures and stronger links to enforceability and litigation. Voluntariness is presented as party autonomy, but participation is often influenced by costs, case management, and the proximity of adjudication.

6 | The Pound Conference and the Birth of the ADR Revolution

Building upon classical arrangements, twentieth-century reforms progressively repositioned mediation within judicial case management and public policy. The Pound Conference, officially titled the “National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice,” convened in 1976 and is commonly treated as a trigger for the ADR era. It was organized in response to sustained criticism of adversarial civil litigation and court inefficiency in the administration of justice (Sander 1985).

One of the central ideas to emerge from the Pound Conference was the concept of the “multi-door courthouse,” proposed by Frank Sander. The proposal envisaged a courthouse offering multiple dispute resolution options, including mediation, alongside arbitration and traditional litigation, so that procedure could be matched to the needs of the disputants. This helped reframe mediation as a system-relevant tool rather than an informal supplement to adversarial litigation (Traum and Farkas 2016, Nolan-Haley, 2020).

The influence of the Pound Conference spread to Europe, where reform debates increasingly treated mediation as part of civil justice modernisation and case-management policy (N. M. Alexander 2003). In France, for instance, the integration of mediation into civil procedures reflected a shift toward more structured settlement pathways and efficiency-oriented reforms (Traum and Farkas 2016).

However, the integration of mediation into European legal systems was not without challenges. In Germany, the introduction of mediation practices sparked debates about how to secure efficiency gains while maintaining procedural fairness and preserving meaningful voluntariness (Kury and Kuhlmann 2016). Similar concerns accompanied court-connected designs more generally, especially where mediation becomes an expected procedural step rather than a purely optional choice (Traum and Farkas 2016).

The Pound Conference also had a broader impact on the cultural perception of mediation in Europe. It emphasized the importance of mediation as a tool not only for case management but also for social value. This perspective emphasized fundamental principles such as party autonomy, self-determination, and the role of mediation in fostering community cohesion, which aligned with the values of European countries as they shaped their own mediation policies (Masucci 2018). Building upon these developments, the idea of mediation as an ADR method first emerged in European countries through theoretical discourse and academic debate before being implemented in national and international legislation (Bonafe-Schmitt and Jullion 2024; Lohvinenko et al. 2021). This process reflects the model of change outlined by Thomas Kuhn, where societal transformations begin with theoretical innovations. According to Kuhn, new ideas initially develop within specialized communities and, through the gradual accumulation of theoretical and practical support, are eventually integrated into the dominant societal framework, prompting broader legislative and institutional transformation (Kuhn 1996). This dynamic is also supported by Hegel in *Philosophy of Right*, where he argues that abstract ideas, such as freedom or ethical principles, must first develop in theoretical form before materializing into societal institutions (Hegel 1896). Habermas explores the role of rational discourse in driving societal change, asserting that norms are established through dialogue and are implemented only after a consensus has been reached (Habermas 1985). For this article's European focus, the Pound episode is used mainly as a reference point for the transatlantic circulation of ADR ideas. It sharpens the authority dimension by foregrounding court-adjacent programme design and professional neutrals. It also supports institutionalization by treating mediation as a system component,

while voluntariness is increasingly channelled through institutional pathways and incentives.

7 | The 2008 EU Directive on Mediation: Standardizing and Expanding ADR Across Europe

Within this trajectory, the 2008 EU Mediation Directive codified and diffused these developments across the Member States. The 2008 EU Directive on Mediation, officially designated as Directive 2008/52/EC, represents a landmark legislative measure aimed at harmonizing and encouraging the application of mediation throughout the European Union. It focused on standardizing practices to address disputes, particularly those involving civil or commercial matters. The Directive sought to resolve key challenges within the European legal framework, with one of its primary goals being to strengthen access to justice across member states (Cebola and Monteiro 2024; Radoja and Dautovic 2024). The Directive sought to provide a quicker, more cost-effective alternative to traditional litigation, which was becoming increasingly burdened across Europe. Mediation was viewed as a necessary solution to alleviate court pressure while still delivering fair outcomes, particularly in cross-border disputes, where traditional litigation could be complicated by differing national legal systems (Feasley 2011).

The 2008 Directive sought to harmonize mediation practices across the EU, yet significant national variations persist, especially in cross-border disputes. The Directive aimed to create a unified framework that would ensure mediation was a viable and reliable method for resolving disputes throughout the EU, thereby increasing legal certainty and fostering cooperation between different national legal systems (Kumar 2017). Additionally, the Directive aimed to foster a culture of mediation across the EU, encouraging its use not just as an alternative to litigation but as a primary step in the dispute resolution process. This cultural shift was essential to making mediation a mainstream option rather than a peripheral or last-resort method (Bonafe-Schmitt and Jullion 2024).

The core principles of the 2008 EU Directive on Mediation can be identified in several key aspects. First and foremost, the Directive stresses that mediation should predominantly remain a voluntary process. This approach allows the parties involved to maintain control over both the procedure and its outcome, setting mediation apart from other mechanisms for resolving disputes, such as arbitration or litigation, where decisions are determined by third parties. Nonetheless, the Directive permits member states to introduce mandatory mediation under specific circumstances (Chereji 2016). An important feature of the Directive is the enforceability of agreements resulting from mediation. It guarantees that such agreements can be granted the same enforceability as court judgments, thereby ensuring legal certainty and promoting the use of mediation by upholding the settlements reached through this process. Additionally, the Directive promotes high standards in mediation practice, including the training and certification of mediators, which is essential for building trust in the process and ensuring its effectiveness (Bonafe-Schmitt and Jullion 2024).

The Directive's influence on EU member states has been profound. The Directive prompted significant legal reforms across the EU, with many countries enacting or updating mediation laws to comply with its provisions. For instance, Italy implemented Legislative Decree No. 28 of March 4, 2010, which made mediation mandatory in certain disputes, reflecting the Directive's emphasis on integrating mediation into the legal framework (Ficcarelli 2020). The use of mediation has increased across the EU following the Directive, particularly in cross-border disputes, demonstrating the Directive's success in making mediation a more mainstream option within the EU's legal systems (Shtefan and Prytyka 2021). Moreover, the Directive has facilitated the establishment of mediation infrastructure across numerous EU member states, including the creation of mediation centres and the advancement of mediation through public awareness initiatives (Tvaronavičienė et al. 2022). However, despite these advancements, there has been critique that the Directive has not gone far enough in promoting mediation uniformly throughout the EU. For example, C.R. Chereji points out that the Directive fell short of achieving full harmonization across member states, with significant variations in how mediation is practiced and enforced (Chereji 2016). Furthermore, Ashish Kumar underscores the difficulties in assessing the Directive's effectiveness due to differing national interpretations and implementations (Kumar 2017).

The Directive's influence extends beyond EU member states to non-EU European countries as well. Non-EU countries, particularly those with aspirations of EU membership or close economic ties to the EU, have aligned their mediation frameworks with EU standards to facilitate cross-border cooperation and ensure compatibility with EU legal practices. The Directive has also encouraged a broader acceptance and use of mediation in neighbouring non-EU countries, which have observed the benefits of a harmonized mediation framework within the EU and sought to promote a similar culture of mediation within their jurisdictions (Lombardi 2020). On the triad, the Directive primarily operates on institutionalization by promoting procedural clarity and pathways to recognition or enforceability. It also affects authority through professionalization and legally recognized mediator roles, while national variation remains significant. Voluntariness stays a formal principle, but participation is often shaped by referral practices and procedural incentives.

8 | ADR-Era Mediation (1976–Present)

8.1 | New Dynamics in Contemporary Dispute Resolution. Singapore Convention

This section examines the late-twentieth- and early 21st-century consolidation of professionalization, standardization, court-connection and enforceability. The ADR era consolidates professional and court-adjacent authority, deepens institutionalization (codes, rosters, quality standards, enforceability routes), and places voluntariness under pressure through managerial and economic incentives, mandatory gateways, and signalling effects. The point is not that mediation becomes “non-voluntary” in a formal sense, but that voluntariness is reconfigured by design choices that make participation the default path rather than an elective option.

Moreover, the integration of mediation into European judicial systems represents more than just a procedural change; it reflects a fundamental shift in how justice is perceived and administered (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters, 2008). The formalization, mandatory use, professionalization, and expansion of mediation are not only about making the legal process more efficient but also about fostering a culture of collaboration, mutual respect, and constructive conflict resolution (European Judicial Systems—CEPEJ Evaluation Report 2022). As mediation continues to evolve within these frameworks, it is likely to play an increasingly central role in how disputes are resolved across Europe, contributing to a legal environment that prioritizes reconciliation and long-term solutions over adversarial confrontation. This ‘court-connected’ mediation emerged to reduce court workloads, improve access to justice, and offer efficient, cost-effective dispute resolution.

Across Europe, mediation has evolved from informal, community-based practice to a formal, legally recognized process embedded in national legal frameworks. For example, in Germany, the enactment of the Mediation Act (*Mediationsgesetz*) in 2012 represented a pivotal moment in incorporating mediation into the legal system, particularly for disputes involving civil and commercial matters. This legislation not only established a more formalized framework for mediation but also highlighted an increasing recognition of its effectiveness in easing court caseloads and facilitating faster, more harmonious dispute resolutions. France followed a similar path, embedding mediation into its legal system (Bonafe-Schmitt and Jullion 2024).

In the ADR era, mediation has often been characterized by mandatory features rather than being strictly voluntary. While mediation itself remains a consensual process, many legal systems have introduced mandatory elements, such as requiring parties to attempt mediation before proceeding to litigation. This approach is intended to encourage early settlement and reduce the adversarial nature of legal disputes. Italy's Legislative Decree No. 28 of 4 March 2010 serves as a notable example of this trend, introducing mandatory mediation for disputes involving civil and commercial matters (Decreto Legislativo 4 marzo 2010, n. 28—Attuazione dell'articolo 60 della legge 18 giugno 2009, n. 69, in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali, 2010). This approach has since become a key component of the Italian legal framework (Ficcarelli 2020). Similarly, Germany and France have implemented legal provisions that embed mandatory mediation within their judicial processes, reflecting a broader effort to encourage alternative dispute resolution and reduce court caseloads (Vericel and Zwickel 2023). Embedding mediation in formal systems shifts it from voluntary flexibility to regulated, sometimes mandatory procedures. Such legal mandates potentially compromise the principle of voluntariness, as they may compel participation rather than encourage it freely. This can undermine the perceived effectiveness of mediation, as participants may view it as an imposed process rather than an empowering choice (Roberts 2002; Allport 2016).

Building on the trend toward formalized and sometimes mandatory mediation processes in Europe, the Singapore

Convention on Mediation (Singapore Convention on Mediation 2019) represents a significant step toward standardizing mediation on a global scale, particularly in commercial disputes. The Convention establishes a comprehensive framework to ensure that agreements reached through mediation can be upheld internationally, aiming to position mediation as a reliable and enforceable alternative to litigation in cross-border disputes. By conferring binding authority upon mediated settlements across jurisdictions, the Convention aligns with broader shifts toward incorporating structured, enforceable mediation within formal legal systems, thereby imbuing mediation with quasi-mandatory characteristics (Dawood 2023). However, the Convention's impact in Europe has been somewhat restrained. While it offers the prospect of greater consistency in the enforcement of mediated settlements, many European countries, both within and outside the EU, have taken a cautious approach to its adoption. The hesitancy surrounding the adoption of the Convention is primarily attributed to the presence of well-established mediation frameworks, such as the 2008 EU Directive on Mediation, which already supports cross-border mediation within the EU. Consequently, the Convention has seen limited ratification in Europe, with only Georgia, Turkey, and Belarus adopting it, highlighting broader concerns about its relevance and the risk of redundancy with existing national systems (Clark and Sourdin 2024; Rękawek 2024; Verbist 2023). This transnational layer is associated with higher institutionalization through standard forms, enforceability routes, and cross-border compatibility. Authority is increasingly tied to legal recognition and professional credibility rather than local standing alone. Voluntariness may be influenced by the value of enforceability and portability, which function as practical reasons to participate.

There has been a parallel professionalization of mediators. In Germany, for example, the role of mediators has become more formalized and professionalized, with an emphasis on maintaining high standards through rigorous training and certification (Ervasti 2018). This shift underscores the importance of ensuring that mediators are well-equipped to handle the complexities of modern legal disputes.

The scope of mediation has significantly broadened in the ADR era. Initially used primarily for small-scale or community disputes, mediation is now applied to a wide range of civil, commercial, family, and even international conflicts. This development highlights the increasing acknowledgment of mediation as a practical and efficient method for resolving a wide range of disputes within the legal framework. For instance, in the United Kingdom, mediation has been incorporated into specific areas such as family law and small claims, showcasing its flexibility and effectiveness across various legal contexts (Ahmed 2024; Ficcarelli 2020). The versatility of mediation in addressing various types of disputes highlights its role in promoting more constructive and less adversarial outcomes.

Initially informal, mediation has become professionalized and often mandated, aligning it closely with the legal framework and marking a shift toward collaborative, less adversarial approaches focused on settlement and relationship preservation. However, this formalization sometimes emphasizes reaching settlements over communication and relationship repair,

potentially steering mediation away from its original goal of fostering community cohesion (Allport 2016).

The development and integration of mediation in Europe have been driven principally by national legal frameworks, many of which now mandate or strongly encourage its use. Italy and France have progressively embedded mediation within ordinary judicial procedure, while the Nordic countries—long familiar with conciliatory traditions—continue to formalize its status in statute and court practice (Tvaronaviciene et al. 2022).

Changing societal needs that favour the reintegration of mediation into judicial architectures reach well beyond considerations of speed and cost. Contemporary disputants increasingly value the preservation of personal and commercial relationships; they prefer reconciliatory and dialogic processes to adversarial confrontation; and they seek greater autonomy over outcomes. Empirical indicators corroborate this cultural realignment. The Council of Europe's CEPEJ evaluation shows that 32 of 45 reporting states recorded year-on-year growth in civil-mediation use between 2018 and 2020, and the median settlement rate stood at 45% (European Judicial Systems—CEPEJ Evaluation Report 2022). At national level, Italy's mandatory scheme registered 180,471 filings in 2022, 28% of which concluded in agreement (Ministero della Giustizia; Dipartimento per gli Affari di Giustizia; Direzione Generale di Statistica e Analisi Organizzativa 2023). Germany's voluntary in-court procedure (Güterichterverfahren) referred 14,602 matters to judge-mediators in 2022, achieving settlement in 46.8% of them (Statistisches Bundesamt (Destatis) 2024).

Across periods, authority migrates, institutionalization deepens, and voluntariness is recalibrated—together forming a recurrent European pattern rather than a rupture.

9 | Discussion

Mediation has transcended its origins as a simple ADR tool, becoming transformative in modern legal systems. Reconnecting the pattern to contemporary designs shows how authority sourcing conditions institutionalization and re-specifies voluntariness in court-adjacent schemes. First, mediator authority has migrated from communal standing (elder, guild peer, parish notable) to professional and court-adjacent credentials. Where compliance once rode on reputation and shared norms, authority now flows from training standards, registers, and the shadow of adjudication (e.g., court-connected schemes and enforceable settlements). This shift expands reach and predictability, but it also re-frames the mediator's legitimacy from social trust to institutional design. Second, that migration helps explain tensions around “mandatory” or channelled models. When entry to litigation is conditioned on a mediation step, the appearance of authority can tilt from neutral facilitation toward outcome management; parties infer that “the system” expects settlement. Designing fire-breaks—opt-outs with reasons, early screening for unsuitability, and rights-salient information—allows systems to harness institutional authority without eroding self-determination. In short, the way authority is sourced conditions both institutionalization (how tightly court-connected a programme is) and voluntariness (how free parties feel within it).

By embedding mediation within formal judicial structures, justice delivery itself is evolving, raising questions about fairness, voluntariness, and its broader impact on legal cultures across Europe. This article investigates the emergence of hybrid models that integrate mediation with traditional litigation, examining their implications for the right to a fair trial as enshrined in the European Convention on Human Rights. Rather than prescribing reforms, the article identifies integration patterns and reflects on their significance for justice delivery across Europe.

While mediation spaces are generally designed to promote inclusivity and fairness, their increasing formalization introduces a paradox. Jacqueline Nolan-Haley discusses how court-connected mediation may lead parties to expect justice through formal procedures, only to encounter a process emphasizing self-determination over legal rights (Nolan-Haley 1996). Formalization and legal practitioners' involvement may undermine mediation's informal, cooperative nature (Clark 2012). The push for standardizing mediation practices, influenced by frameworks like the EU Mediation Directive and the Singapore Convention, aims for consistency but may compromise mediation's inherent flexibility and adaptability (N. Alexander 2019). As mediation becomes institutionalized, the design of mediation spaces—whether physical or virtual—must also uphold principles of neutrality, inclusivity, and voluntariness, as spatial design plays a crucial role in ensuring perceived fairness and equality among participants (Lindsey 2022).

Recent developments in European civil justice systems have significantly reshaped judicial roles, positioning judges not only as decision-makers but increasingly as facilitators of settlement within diversified procedural landscapes. Trends such as court specialization, digitalisation, and institutionalized ADR mechanisms have required judges to adapt, demanding greater managerial flexibility and engagement with consensual dispute resolution (Biard et al. 2021). While many judges have accepted these changes as necessary modernization, there remain concerns, particularly regarding potential overreliance on artificial intelligence and the associated erosion of deliberative judicial reasoning. Empirical findings from Poland further illustrate judges' generally positive attitudes toward mediation, highlighting frequent case referrals and judges' substantial familiarity with mediation practices (Broński et al. 2024). Nevertheless, the judicial community appears less inclined toward advocating major legislative reforms, instead favouring enhanced professional training and awareness-raising initiatives to embed mediation more effectively within judicial routines.

Within the broader legal community, responses to mandatory mediation remain mixed. Anne Marion de Cayeux emphasizes continued reluctance among French lawyers to fully embrace mediation, attributing this hesitation to traditional legal culture, gaps in mediation training, and economic considerations, notably mediation's perceived lower profitability compared to litigation (de Cayeux 2022). Furthermore, scholarly perspectives suggest that mediation and other non-adversarial processes are reshaping lawyers' professional identities across Europe. Zienkiewicz argues from a holistic perspective, suggesting that contemporary legal practitioners increasingly adopt multifaceted roles—acting as negotiators, mediators, and facilitators—requiring enhanced emotional competence and relational skills

(Zienkiewicz 2021). Comparative work shows that organized bars initially resisted court-connected or compulsory mediation but have gradually re-positioned themselves as “settlement advocates” to maintain professional relevance (Clark 2012; Macfarlane 2017). A cross-jurisdictional survey of 10 European and Commonwealth systems likewise documents a spectrum ranging from active uptake (Italy, the Netherlands) to guarded acceptance (Germany, England and Wales), with cost-conscious corporate counsel acting as key drivers (Menkel-Meadow 2015).

Such institutionalization raises the profile of mediation but, as Lesley Allport cautions, may also attenuate voluntariness and shift expectations from neutral facilitation toward outcome-driven settlement (Allport 2016). These dynamics can be described as interactions within the triad rather than as a single evaluative claim. As institutionalization increases, authority in practice may become more steering, especially in court-connected settings. Voluntariness may remain formal, while decisions to participate are shaped by incentives, signalling effects, and unequal bargaining positions.

10 | Conclusion

The study states the implications along each axis and the design consequences for court-connected mediation. Legitimacy moved from communal trust to professional/court-adjacent credential; this widens access but risks role-drift toward settlement management. Informal custom became standardized, enforceable procedure; court-connection is not a rupture but a recurrent European pattern. Social expectation became managed participation; gateways are autonomy-compatible only with narrow, rights-salient safeguards (opt-outs with reasons, early screening, rights-salient information).

In Europe, mediation and early judicial systems originated from shared foundations, with feudal, tribal, religious courts, and communal assemblies employing customary law and local traditions for dispute resolution. These early frameworks privileged consensus and social cohesion, relying on respected community figures, such as elders, who rendered decisions rooted in tradition. Serving as mechanisms of societal governance, they preserved communal harmony and limited escalation. However, as societies grew increasingly complex, judicial systems transformed into centralized, formal institutions. This transformation, marked by the strengthening of state authority, the formalization of legal codes, the emergence of legal professionalism, and the waning of community-based dispute resolution methods, gradually pushed informal mechanisms like mediation to the margins of the legal system.

Mediation and judicial processes are converging once again for many of the same reasons that previously drove them apart: changes in social structures, legal and economic factors, cultural shifts, and the rise of formal institutions. Today, mediation reintegrates into legal systems due to flexibility, party autonomy, and simplified dispute resolution pathways lost in bureaucratic complexity.

Changing societal needs driving the reintegration of mediation into judicial systems extend well beyond time- and

cost-efficiency. They include a pronounced focus on relationship preservation in family, business and community contexts, and a wider cultural shift toward collaborative dispute resolution that privileges party autonomy. Additionally, in a globalized world with diverse communities, mediation's flexibility makes it well-suited for resolving cross-cultural conflicts where traditional legal processes may struggle. Societies now favour non-adversarial solutions; mediation's interest-based negotiation offers a human-centred, adaptable legal approach. This study demonstrates that mediation in Europe historically emphasized voluntary participation, impartial facilitation, and informal processes aimed at preserving social harmony and relationships. Over time, mediation transitioned from community-based informal mechanisms into structured, professionalized procedures integrated into formal judicial frameworks. Significantly, mediation and judicial systems share common historical foundations, emerging from communal and customary practices that prioritized consensus and social cohesion. Although formalization and centralisation historically marginalized these informal practices, recent decades have witnessed their reintegration due to evolving societal needs, such as relationship preservation, flexibility in dispute resolution, and preference for collaborative rather than adversarial approaches. Therefore, contemporary institutionalization of mediation represents not a radical innovation but rather the reconceptualization and revival of long-standing European traditions.

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Ethics Statement

The author has nothing to report.

Conflicts of Interest

The author declares no conflicts of interest.

Data Availability Statement

All data used in this study are available from publicly accessible sources.

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