



RESTORATIVE JUSTICE AS AFFECTIVE GOVERNANCE: DISCURSIVE CONTROL AND STATE POWER IN YOUTH JUSTICE IN AUSTRALIA AND CHINA

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This article examines youth restorative justice in Australia and China as a form of affective governance. Through critical discourse analysis, comparative legal analysis, and socio-cultural critique, it shows how restorative vocabularies of participation, responsibility, and repair are embedded in legal and bureaucratic structures that manage voice, emotion, and agency. In Australia, youth restorative justice is shaped by settler-colonial and administrative forms of control; in China, restorative elements are absorbed into state-led correctional governance. Across both contexts, dialogue becomes a managed performance of state-defined repair, revealing the limits of state-led restoration and its translation of care into control.

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I INTRODUCTION

Restorative justice (‘RJ’) is often presented as a participatory alternative to punitive criminal justice, centred on healing, reparation, and victim empowerment through dialogue.¹ In youth justice, this promise has been especially influential because it aligns with rehabilitative ideals of reintegration, diversion, and reduced reliance on punishment.² Partly developed in reaction to criticism over the shortcomings of Western criminal justice systems in supporting victims and communities, along with references to Indigenous ways of resolving conflict, the RJ model (mediation, family group conferencing, circles, and so on) has been utilised in many jurisdictions

¹ Paul McCold, ‘The Recent History of Restorative Justice: Mediation, Circles, and Conferencing’ in Dennis Sullivan and Larry Tifft (eds), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006) 23.

² Gordon Bazemore and Mark Umbreit, ‘Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime’ (1995) 41(3) *Crime and Delinquency* 296, 302, 311; Gordon Bazemore, ‘Young People, Trouble, and Crime: Restorative Justice as a Normative Theory of Informal Social Control and Social Support’ (2001) 33(2) *Youth & Society* 199, 204–5, 208–9, 214.

around the world.³ Nevertheless, behind this aura of transformative potential is a complex and often contradictory reality: although RJ claims a participatory philosophy, it is constituted through state power.⁴ This dynamic is particularly evident in the legally and institutionally discursive aspects of RJ: how language, procedure, institutional narratives, and facilitated dialogue are structured to shape and constrain participation.⁵

The academic and policy literatures on RJ offer important insights but often operate within a state-centric framework, accepting institutional definitions of ‘success’ and generally overlooking the crucial question of power dynamics.⁶ Indeed, an emerging body of literature has begun to reveal the power dynamics concealed beneath restorative discourse and practice.⁷ However, a significant gap remains: a sustained, comparative examination of how RJ’s legal and institutional frameworks structure participation, responsibility, and repair in ways that constrain voice and agency and

³ See McCold (n 1). See also Daniel W Van Ness and Karen Heetderks Strong, ‘The Shape of Things to Come: A Framework for Thinking about a Restorative Justice System’ in Elmar GM Weitekamp and Hans-Jürgen Kerner (eds), *Restorative Justice: Theoretical Foundations* (Willan Publishing, 2002) 1.

⁴ The moral vocabulary of ‘restoration’ and ‘community’ can become a mechanism of social control when institutionalised by the state. Once these vocabularies are absorbed into bureaucratic or legal frameworks, they may legitimise institutional priorities and transform restorative ideals into instruments of governance rather than empowerment: see John Braithwaite, ‘The Family Model of the Criminal Process: Reintegrative Shaming’ in *Crime, Shame, and Reintegration* (Cambridge University Press, 1989) 54, 59, 62; Giuseppe Maglione, ‘Restorative Justice and the State. Untimely Objections against the Institutionalisation of Restorative Justice’ (2021) 17(1) *British Journal of Community Justice* 5.

⁵ Juan Tauri, ‘The Plastic Shamans of Restorative Justice’ in Chris Cunneen et al (eds), *The Routledge International Handbook on Decolonizing Justice* (Taylor & Francis Group, 2023) 43, 45–6 (‘Plastic Shamans’).

⁶ These studies mainly took two dominant trajectories. Procedural design and comparative models are the primary focus of the first, where the implementation of RJ across different legal systems is evaluated: see 江山河 [Jiang Shanhe] and 张健 [Zhang Jian], 《恢复性司法: 国外起源与发展、主要操作模式及中国实践》 [Restorative Justice: Its Origin, Development and Major Models in the World and China’s Practice] (2024) 1 青少年犯罪问题 *Issues on Juvenile Crimes and Delinquency* 96. The second, more extensive strand focuses on outcomes, including the effectiveness of RJ in reducing recidivism, enhancing victim satisfaction, and generating cost efficiencies for justice systems that can be measured: see Simon Little, Anna Stewart and Nicole Ryan, ‘Restorative Justice Conferencing: Not a Panacea for the Overrepresentation of Australia’s Indigenous Youth in the Criminal Justice System’ (2018) 62(13) *International Journal of Offender Therapy and Comparative Criminology* 4067, 4072, 4084.

⁷ A smaller, but vital, critical scholarship — often drawing on decolonial, feminist, and critical legal theories — has interrogated whether RJ might operate as a neocolonial tool, appropriating Indigenous cultural symbols while reinforcing state control, in settler-colonial contexts like Australia and Canada: Tauri, ‘Plastic Shamans’ (n 5) 43–52; Juan Marcellus Tauri, ‘What Exactly Are You Restoring Us to? A Critical Examination of Indigenous Experiences of State-centred Restorative Justice’ (2022) 61(1) *Howard Journal of Crime and Justice* 53, 54–7; Dean Young, ‘Your Ways or Our Ways?: Addressing Canadian Neo-Colonialism and Restorative Justice’ (2019) 7(2) *Salus Journal* 85.

thereby function as a mechanism of state governance in vastly different political and cultural contexts.

This article argues that youth RJ in Australia and China operates as a form of affective governance, in which restorative discourses of participation, responsibility, and repair are structured by legal and institutional frameworks and translated into state-managed practices of control.

The article selects Australia and China because, as two Asia-Pacific jurisdictions, they provide a strategically useful different-systems comparison through which to examine how youth RJ is institutionalised across contrasting legal-political orders.⁸ Australia and China differ markedly in their constitutional structures, legal traditions, political ideologies, and the historical foundations of state authority.⁹ However, both countries have made children and young people primary sites for RJ experimentation, and both exhibit a strong state involvement in its construction and management.¹⁰ Precisely because these systems are so different, the recurrence of similar discursive patterns is analytically significant. In both contexts, restorative vocabularies are translated into institutional practices that structure who may speak, how responsibility must be performed, and what forms of repair become legally recognisable. The comparison seeks to test whether the state-centred

⁸ This form of comparison does not rest on the claim that the selected jurisdictions are unique or representative of an entire legal family. Rather, it follows a problem-oriented and ‘most different systems’ logic: jurisdictions may be selected because they confront a common legal or governance problem while differing sharply in institutional, political, and socio-legal context: see Ran Hirschl, ‘Case Selection and Research Design in Comparative Constitutional Studies’ in *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press, 2014) 224; Ralf Michaels, ‘The Functional Method of Comparative Law’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press, 2nd ed, 2019) 345. For recent examples of problem-oriented case selection in comparative legal scholarship: see Brendan Clift, ‘Defamation Law in Greater China: Principles, Politics, and Prospects’ (2025) 13 *The Chinese Journal of Comparative Law* cxaf006:1–19; Rory Gillis, ‘Federalism and Vertical Tax Competition’ (2025) 73(1) *The American Journal of Comparative Law* 76; Alvin Hoi-Chun Hung, ‘Evolution of Intangible Property to Crypto Assets: Legal Pragmatism in Anglo-American Common Law and Chinese Civil Law’ (2024) 12 *The Chinese Journal of Comparative Law* cxae011:1–20.

⁹ Zhu Jingwen, ‘The Socialist Legal System with Chinese Characteristics: Its Structure, Features and Trends’ (2011) 32(3) *Social Sciences in China* 87, 89. See also Leslie Zines, ‘The Common Law in Australia: Its Nature and Constitutional Significance’ (2004) 32(3) *Federal Law Review* 337, 337–44. It is worth noting that the Chinese government defines its legal system as ‘socialist rule of law with Chinese characteristics (中国特色社会主义法治体系)’ : 《法治中国建设规划 (2020–2025年)》 [Plan on Building the Rule of Law in China (2020-2025)] (People’s Republic of China) Communist Party of China (‘CPC’) Central Committee, 10 January 2021.

¹⁰ 史立梅 [Shi Limei] and 王坤 [Wang Kun], 《恢复性少年司法在我国的价值及其实现》 [Restorative Juvenile Justice: Value and Realization in China] (2017) 5 贵州民族大学学报(哲学社会科学版) *Journal of Guizhou Minzu University (Philosophy and Social Science)* 133, 133–4. See also Little, Stewart and Ryan (n 6) 4069–70.

cooption of RJ may be a broader feature of modern governance rather than a pathology of one legal culture alone.

The article proceeds in four substantive parts. Part II examines how youth RJ in Australia is institutionalised through settler-colonial and administrative forms of governance. Part III turns to China, analysing how restorative-type juvenile justice mechanisms translate the concept of RJ into state-led correctional practices.¹¹ Part IV develops the comparative discourse analysis, identifying both the divergences and convergences through which different legal-political systems transform restorative dialogue into a managed performance of state-defined repair. Part V concludes by considering the limits of state-led youth RJ and the conditions under which RJ might recover its transformative potential.

Across these parts, the article shows that the promise of RJ is consistently compromised by its institutionalisation, which translates care into control and reproduces hierarchies under the moral veneer of restoration.¹² In both contexts, the discursive structure of RJ processes creates a hierarchy of voices that prioritises state-defined outcomes.¹³ In Australia, a settler-colonial legal order historically founded upon English common law introduced by the colonising power (the British Empire), youth RJ has been institutionalised through models such as youth justice conferencing.¹⁴ Despite being marketed as ‘Indigenous-inspired’, these practices have been critiqued as a form of ‘plastic shamanism’ that appropriates cultural symbols while serving state crime control agendas and failing to address the systemic hyperincarceration of Aboriginal and Torres Strait Islander children and young people.¹⁵ In China, youth RJ is framed through an officially mobilised vocabulary of harmony, education, and social stability, drawing partly on Confucian

¹¹ Chinese law does not formally adopt or define ‘restorative justice’ as a coherent legal doctrine or institutional model. However, a range of juvenile justice practices contain restorative elements that reflect core RJ concerns with repair, responsibility, and reintegration. Part III explains this usage in more detail.

¹² See Jordana Silverstein, ‘Legislation’ in *Cruel Care: A History of Children at Our Borders* (Monash University Publishing, 2023) 87.

¹³ See generally Norman Fairclough, *Language and Power* (Routledge, 3rd ed, 2015). See also Pierre Bourdieu, *Language and Symbolic Power*, ed John B Thompson, tr Gino Raymond and Matthew Adamson (Polity Press in association with Basil Blackwell, 1991).

¹⁴ The Australian state maintains its existence through the ‘continuous repetition of state violence’, and judicial institutions such as police and prisons are ‘a continuation of colonial violence’: Crystal McKinnon, ‘The Lives Behind the Statistics: Policing Practices in Aboriginal Literature’ (2019) 45(2) *The Australian Feminist Law Journal* 207, 208–9; Michele Zappavigna and JR Martin, ‘Approaching Restorative Justice’ in *Discourse and Diversionary Justice: An Analysis of Youth Justice Conferencing* (Palgrave Macmillan Cham, 2018) 1, 10; Jeremy Prichard and Rosanne Burton-Smith, ‘Conscience and Moral Development: An Explanation of RISE Recidivism Results with Implications for Juvenile Conferencing and Restorative Justice’ (2004) 15 *Australasian Dispute Resolution Journal* 248, 248–50.

¹⁵ Tauri, ‘Plastic Shamans’ (n 5); Little, Stewart and Ryan (n 6).

moral idioms but operating within a party-state legal order.¹⁶ In both systems, 'dialogue' becomes a scripted performance, and participants are reduced to objects of management rather than agents of their own healing.¹⁷

The article employs a macro-micro comparative framework that illuminates how RJ operates simultaneously as a moral-legal discourse and a governance technology. At the macro level, the analysis examines the similar structural logics through which both Australia and China institutionalise RJ as an instrument of governance.¹⁸ At the micro level, the study investigates how these macro discourses materialise in concrete legal areas (primarily legislation) where young people and victims are procedurally arranged to engage in structured dialogue. Although micro-level legal procedures, institutional arrangements, and governing vocabularies differ between the two jurisdictions, these differences illustrate divergent pathways of operationalising 'restoration' that ultimately serve analogous state purposes.¹⁹ Bringing these two levels together demonstrates that RJ, far from operating outside

¹⁶ 'Harmony (He Xie 和谐)' was formally incorporated into China's Core Socialist Values in the 2010s as one of the 'national-level value goals', but its political significance predates that incorporation, having long been framed in central policy discourse as an essential attribute of socialism with Chinese characteristics and a long-standing goal of the Party: 《关于培育和践行社会主义核心价值观的意见》 [Opinions on Cultivating and Practicing the Core Socialist Values] (People's Republic of China) General Office of the CPC Central Committee, 23 December 2013 ('Core Socialist Values'); 《中共中央关于构建社会主义和谐社会若干重大问题的决定》 [Decision of the CPC Central Committee on Major Issues Concerning the Building of a Socialist Harmonious Society] (People's Republic of China) CPC Central Committee, 11 October 2006 ('Harmonious Society Decision'). Central policy documents such as *Decision of the CPC Central Committee on Strengthening the Party's Governing Capacity* characterise 'social harmony' and 'stability maintenance (Wei Wen 维稳)' as core governance imperatives, forming the ideological backdrop against which criminal justice practices — including mediation — are implemented: 《中共中央关于加强党的执政能力建设的决定》 [Decision of the CPC Central Committee on Strengthening the Party's Governing Capacity] (People's Republic of China) CPC Central Committee, 19 September 2004. See also Yan Zhang and Yiwei Xia, 'Can Restorative Justice Reduce Incarceration? A Story from China' (2021) 38(7) *Justice Quarterly* 1471, 1486; 王平 [Wang Ping], 《恢复性司法在中国的发展》 [Developments of Restorative Justice in China] (2016) 14(4) 北京联合大学学报(人文社会科学版) *Journal of Beijing Union University (Humanities and Social Sciences)* 70, 72.

¹⁷ RJ conferences use pre-set 'scripts' to structure dialogues and are strictly managed by a coordinator, who may intervene and direct the perpetrator's behaviour during the conference: see Clare McGlynn, Nicole Westmarland and Nikki Godden, "'I Just Wanted Him to Hear Me": Sexual Violence and the Possibilities of Restorative Justice' (2012) 39(2) *Journal of Law and Society* 213, 226–7.

¹⁸ See 王平 [Wang Ping] (n 16); Tauri, 'Plastic Shamans' (n 5). See also Zhang and Xia (n 16); Xiaoyu Yuan, 'Good Seeds, Bad Soil? A Case Study of the Vital Context in the Restorative Justice Process in Mainland China' (2018) 54 *International Journal of Law, Crime and Justice* 34.

¹⁹ See Barry Goldson et al, 'The Racialisation of Youth Justice and Penalty' in *Youth Justice and Penalty in Comparative Context* (Routledge, 2020) 100, 119, 123–4; Youth Justice NSW, *Youth Justice Conferencing Manual* (Manual Version 1.0, May 2021) 4; 'Restorative Justice', *Corrective Services NSW* (Web Page, 22 January 2026) <<https://correctiveservices.dcj.nsw.gov.au>> ('NSW Restorative Justice Web Page'); Xiaoyu Wang, Shujun Wang and Guoyi Lv, 'Three Models of Community Corrections in China' (2024) 6(11) *Journal of Social Science and Humanities* 127, 128.

state power, functions as one refined expression — an affective governance model that aestheticises control through the language of care.²⁰ In this sense, the comparative framework reveals that what differs at the legal procedure and institutional form converges at the level of governance: distinct procedural forms enact a shared logic of control, institutionalising state authority through the moral vocabulary of restoration.²¹

Methodologically, this article combines critical discourse analysis, comparative legal analysis, and socio-cultural critique.²² It examines legal and policy materials in Australia and China not to evaluate RJ through measures of effectiveness, but to analyse how RJ is legally and bureaucratically constructed as a language of governance. Through this form of governance, care, rehabilitation, and restoration can be transformed into administrative and emotional regulation. The scope of the study focuses on selected materials within each country: in Australia, the analysis centres on legal materials from New South Wales ('NSW') and the Northern Territory ('NT') as analytically strategic and contrastive sites within Australia's fragmented federal youth justice landscape; in China, the analysis is based primarily on statutes, judicial interpretations, and other official normative and policy documents, acknowledging the centralised structure of its legal system, which means policies are nationally mandated and locally implemented.²³

II PROTECTION AS CONTROL: SETTLER-COLONIAL GOVERNANCE OF YOUTH RESTORATIVE JUSTICE IN AUSTRALIA

This part focuses on the legislative architecture of youth RJ in selected Australian jurisdictions — NSW and the NT. These two sites have been deliberately chosen to capture both the centre and the periphery of Australia's youth justice landscape.

²⁰ See Silverstein (n 12). See also Kieran McEvoy and Anna Eriksson, 'Restorative Justice in Transition: Ownership, Leadership and "Bottom-up" Human Rights' in Dennis Sullivan and Larry Tifft (eds), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006) 321.

²¹ See Brian M Lowe, 'The Creation and Establishment of Moral Vocabularies: Why Moralizing and Moral Vocabularies Matter' in Steven Hitlin and Stephen Vaisey (eds), *Handbook of the Sociology of Morality* (Springer New York, 2010) 293, 294–5, 297.

²² See generally Fairclough (n 13). See also Gilbert Weiss and Ruth Wodak (eds), *Critical Discourse Analysis: Theory and Interdisciplinarity* (Palgrave Macmillan, 2003); Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press, 2nd ed, 2019); Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Ashgate, 2006).

²³ Here, 'official normative and policy documents' refers to the broader body of authoritative materials through which juvenile justice rules are formulated, interpreted, and implemented in China. In addition to national legislation, this article analyses central policy documents, judicial interpretations, procuratorial and court procedural rules, implementation measures, opinions, and other official materials issued by central legal and governmental institutions.

NSW is the most populous state and the invasion ‘ground zero’, where the British imposed their law without permission.²⁴ The *Young Offenders Act 1997* (NSW) is a useful point of entry into this broader Australian pattern: it formalises diversion through warnings, cautions, and Youth Justice Conferences, thereby making visible the admission — responsibility — conference logic that has become central to Australian youth RJ, albeit in jurisdictionally varied forms.²⁵ NSW exemplifies a managerial form of RJ that integrates moral vocabulary into bureaucratic rationalities.

By contrast, the NT represents a frontier jurisdiction where RJ operates in a context of concentrated settler-colonial governance, reflected most starkly in the overwhelming overrepresentation of First Nations children in youth detention.²⁶ The NT represents both the periphery and the mirror of this system — a jurisdiction where RJ operates as a continuation of colonial administration under the veneer of community healing. Its framework — anchored in the *Youth Justice Act 2005* (NT), *Youth Justice Regulations 2006* (NT), and *Care and Protection of Children Act 2007* (NT) — illustrates how the NT youth justice framework fuses penal, welfare, and cultural rationalities into a composite regime of racial and colonial control. Here, RJ becomes a language through which punishment is moralised, welfare is instrumentalised, and racialised governance is bureaucratised within a penal-welfare complex.²⁷

²⁴ Australian Bureau of Statistics, *National, State and Territory Population, September 2025* (Web Page, 19 March 2026) <www.abs.gov.au>; Dharug Ngurra et al, ‘Biyani Guwiyang Dharug Ngurrawa: Healing Fire on Dharug Country’ (2025) 21(1) *Ecosystems and People* 2495016:1–17, 3; Katrina Thorpe, Linda ten Kate and Cathie Burgess, ‘Reimagining Democratic Education by Positioning Aboriginal Country-Centred Learning as Foundational to Curriculum and Pedagogy’ (2024) 44(2) *Curriculum Perspectives* 205, 207–9, 211.

²⁵ *Young Offenders Act 1997* (NSW). See Kelly Richards, ‘Police-Referred Restorative Justice for Juveniles in Australia’ (Trends & Issues in Crime and Criminal Justice No 398, Australian Institute of Criminology, August 2010). See also Jacqueline Joudo-Larsen, *Restorative Justice in the Australian Criminal Justice System* (Research and Public Policy Series No 127, Australian Institute of Criminology, 2014).

²⁶ While there are more incarcerated Indigenous children than any other group in all Australian jurisdictions, in the Northern Territory, on any given night, almost all incarcerated children are Indigenous children: see *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* (Final Report, 17 November 2017) (‘NT Youth Detention Royal Commission Final Report’). See also Australian Institute of Health and Welfare, *Youth Justice in Australia 2023–24* (Web Report, 28 March 2025); Chloe Boffa and Anita Mackay, ‘Hyperincarceration and Human Rights Abuses of First Nations Children in Juvenile Detention in Queensland and the Northern Territory’ (2025) 37(1) *Current Issues in Criminal Justice* 58, 58–61, 64; Thalia Anthony, ‘The Perils of Positivism in the NT Royal Commission into Youth Detention: The Case for a Post-Positivist Frame for First Nations Justice’ (2020) 29(1) *Griffith Law Review* 43.

²⁷ See Loïc Wacquant, ‘The Criminalization of Poverty in the Post-Civil Rights Era’ in *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press, 2009) 41, 41, 43, 47–8, 60.

Analysing these two jurisdictions together reveals the structural continuum of Australian youth RJ — from the metropolitan forms of coloniality embedded in liberal-managerial governance to the frontier expressions of coloniality sustained through racialised control.²⁸ Their juxtaposition thus enables a critical examination of how ‘restoration’ is translated into governance across different colonial spaces, exposing both the national coherence and regional differentiation of the settler-colonial state’s restorative discourse. The analysis does not claim that NSW and the NT are representative of youth RJ practices across Australia as a whole; rather, they are treated as strategically selected jurisdictions.

A *The Architecture of Diversion and the Construction of Responsibility*

The *Young Offenders Act 1997* (NSW) establishes a three-tier diversionary hierarchy — warnings, cautions, and conferences.²⁹ Its stated purpose is to ‘provide an alternative process to court proceedings for dealing with children’ and to promote ‘acceptance of responsibility by the offender’ while ‘meeting the needs of victims’.³⁰ The principle that ‘the least restrictive form of sanction’ should be applied reflects a welfare-oriented approach, but it also encodes a graded logic of control: only those who ‘admit the offence’ and consent to diversion may access ‘diversionary’ options.³¹ Thus, confession becomes a precondition of eligibility, turning moral recognition into procedural compliance.

Conferences are portrayed as participatory but are tightly supervised by police referrals, prosecutorial oversight, and standardised outcome plans.³² In diversionary levels, responsibility is not an autonomous moral act but a governed practice — a process through which the child, positioned as a suspect or target of intervention, learns to internalise the expectations of authority. The Act’s emphasis on ‘acceptance of responsibility’ as the main objective of conferences exemplifies this managerial turn: responsibility becomes a behavioural marker of rehabilitation

²⁸ See generally Heidi Norman, *What Do We Want? A Political History of Aboriginal Land Rights in New South Wales* (Aboriginal Studies Press, 2015). See also Susan Greer and Patty McNicholas, ‘Accounting for “Moral Betterment”: Pastoral Power and Indentured Aboriginal Apprenticeship Programs in New South Wales’ (2017) 30(8) *Accounting, Auditing and Accountability Journal* 1843, 1845, 1851, 1861; Lana D Hartwig, Sue Jackson and Natalie Osborne, ‘Trends in Aboriginal Water Ownership in New South Wales, Australia: The Continuities between Colonial and Neoliberal Forms of Dispossession’ (2020) 99 *Land Use Policy* 104869:1–13; Jillian Kramer, ‘“Legitimizing Fictions”: The Rule of Law, the Northern Territory Intervention and the War on Terror’ (2015) 19 *Law Text Culture* 127, 128, 132, 142. See Deirdre Howard-Wagner and Ben Kelly, ‘Containing Aboriginal Mobility in the Northern Territory: From “Protectionism” to “Interventionism”’ (2011) 15 *Law Text Culture* 102.

²⁹ *Young Offenders Act 1997* (n 25) ss 13–61.

³⁰ *Ibid* s 3.

³¹ *Ibid* ss 7(a), 10, 19(b)–(c), 36(b)–(c), 40(1)(b)–(c).

³² *Ibid* ss 34–52.

rather than a freely chosen ethical stance.³³ In reality, this is less an ethical choice than a coerced confession of criminality — an act performed under the procedural authority of police officers who define and validate the child's 'responsibility'.

This institutional design also has broader political consequences. Where diversion depends upon admission, compliance, and administratively recognisable responsibility, it is unlikely to address the structural causes of youth offending, including poverty, racialised policing, family instability, exclusion from education, and the intergenerational effects of colonial governance.³⁴ Yet when offending persists or becomes publicly visible, the limits of diversion are often interpreted not as evidence of these deeper structural failures, but as evidence that diversion itself is too lenient or ineffective.³⁵ This dynamic allows governments to celebrate RJ when it produces measurable compliance, while disavowing it when public anxiety about youth crime intensifies.³⁶ The result is a circular politics of youth justice: diversion is constrained by state-defined eligibility and completion requirements, and its constrained outcomes are then used to justify renewed punitive intervention in the name of community safety and victims' rights.

This logic of governed responsibility is also diffused across the family unit. The Act specifies that 'parents are primarily responsible for the development of children', and it requires their participation in conferences where appropriate.³⁷ This distribution of responsibility reflects the logic of governance through delegation, transforming familial relations into auxiliary instruments of correction. What appears as community participation is, in effect, a police-gatekept and state-administered process that internalises state authority within the community

³³ Ibid s 34(1)(a)(i).

³⁴ Estrella Pearce, 'Why "Admission of Guilt" Is Not Working in Youth Diversionary Schemes in NSW: Exploratory Findings from Interviews with Police Officers' (2021) 33(3) *Current Issues in Criminal Justice* 285, 286–7, 291–5; Ruth McCausland and Eileen Baldry, 'Who Does Australia Lock up? The Social Determinants of Justice' (2023) 12(3) *International Journal for Crime, Justice and Social Democracy* 37, 45–8.

³⁵ Tamara Walsh and Robin Fitzgerald, 'Youth Justice, Community Safety and Children's Rights in Australia' (2022) 30(3) *International Journal of Children's Rights* 617, 629–633.

³⁶ See Matthew D Kim, 'Redesigning Restorative Justice for Criminal Justice Reform' (2022) 88(4) *Tennessee Law Review* 947, 950–1, 956–9, 977–80. See also Kevin Drakulich, 'Public Opinion and Criminal Justice Reform' (2022) 47(6) *American Journal of Criminal Justice* 1166.

³⁷ *Young Offenders Act 1997* (n 25) ss 7(f), 45, 47.

sphere.³⁸ Because it is conducted by sworn officers, it cannot escape the criminalising logic of policing, no matter how restorative its language may appear.³⁹

The legal framework in the NT extends and intensifies this logic by situating responsibility in a moral-therapeutic narrative of ‘care through discipline’. Section 3 of the *Youth Justice Act 2005* (NT) states that a youth who commits an offence should be given ‘appropriate treatment, punishment and rehabilitation’.⁴⁰ This is bolstered in s 4 with the requirement that children ‘develop in socially responsible ways’ and that family ‘relationships are maintained where appropriate’, alongside the preservation of ‘the interests of the community’.⁴¹ The language of ‘rehabilitation’ here is also about correction, and the young person’s moral reform is both the goal and the measure of justice.

In contrast to the procedural diversion model of NSW, Part 3 of the *Youth Justice Act 2005* (NT) provides the mechanism to inscribe diversion in a police-managed morality regime.⁴² Diversion to a Youth Justice Conference or diversion program is unavailable where the youth denies the alleged behaviour; legal closure depends on satisfactory completion.⁴³ The NT diversion framework formalises this process into the ‘ritual’ of the State — through warnings, program attendance and documented reflection on behaviour and its effects.⁴⁴ Responsibility is turned into an audit trail: remorse documented, reflection logged, and compliance rewarded. This is more than an administrative detail — it represents a governmentalisation of morality: the production of responsible subjects through procedural confession.⁴⁵ In terms of the NT, the frontier context exacerbates this dynamic; responsibility is a state pedagogy for Indigenous youth taught by a settler-imposed framework, not one against it.

B *The Bureaucratisation of Restoration and the Role of Victims*

Unless the conference administrator reasonably considers it impracticable, a conference must be held within 42 days of the administrator receiving the referral and at least 10 days after notice is given to the child under s 45, and must be

³⁸ Ibid ss 21, 38, 40–41; Australian Institute of Health and Welfare, *Youth Justice in Australia 2023–24: Appendix D — State and Territory Youth Justice Systems, Policies and Programs 2023–24* (Web Report, 28 March 2025) 2–5.

³⁹ Pearce (n 34).

⁴⁰ *Youth Justice Act 2005* (NT) s 3(e).

⁴¹ Ibid s 4.

⁴² Ibid ss 37–44.

⁴³ Ibid ss 39(2), 40(1), 41(1), 42(1)–(3), 42A(1). See also ‘Youth Diversion Programs’, *Northern Territory Government* (Web Page) <<https://nt.gov.au>>.

⁴⁴ *Youth Justice Act 2005* (n 40) ss 39, 42A. See also Youth Diversion Programs (n 43).

⁴⁵ See Nikolas Rose and Peter Miller, ‘Political Power beyond the State: Problematics of Government’ (2010) 61(s1) *The British Journal of Sociology* 271, 273, 281–6.

conducted in accordance with any applicable written guidelines approved by the Secretary.⁴⁶ Participants are required to reach an outcome plan — a written agreement setting out specific actions or undertakings. Once the conference administrator gives written notice that the outcome plan has been satisfactorily completed, no further criminal proceedings may be taken.⁴⁷ Restoration thus becomes a matter of bureaucratic closure rather than moral dialogue.⁴⁸ The process is bound by deadlines, reporting obligations, and record-keeping requirements, reflecting an administrative rather than relational conception of justice.

The participation of victims and other relevant parties, though frequently invoked as a symbol of inclusivity, is similarly scripted. The Act defines ‘victim’ to include any person that has suffered ‘physical, emotional or psychological harm’, broadening the concept of harm while extending the state’s moral jurisdiction.⁴⁹ The convenor may exclude persons other than the child or any victim whose presence ‘would frustrate the purpose or conduct of a conference’.⁵⁰ This structure transforms participation into a managed performance of reconciliation, designed to sustain legitimacy and efficiency.

In effect, the NSW scheme bureaucratises empathy. The emotional language of ‘closure’, ‘safe environment’, and ‘respectful dialogue’ that is contained in policy documents, such as the *Restorative Justice Service Policy*, demonstrates that affect has been codified as an administrative task.⁵¹ The convenor does not merely facilitate open-ended reconciliation; rather, the role involves structuring affective exchange and eliciting institutionally legible expressions of remorse, apology, and repair, while containing participation within an orderly, safe, and procedurally efficient sequence.⁵² Restoration is governed by emotional regulation, not transformative healing.

Indeed, the NT system displays a similar administrative translation of feeling into material — only this is a language closely integrated with the language of ‘community repair’. Part 5, Division 3 of the *Youth Justice Act 2005* (NT) requires

⁴⁶ *Young Offenders Act 1997* (n 25) ss 43, 49.

⁴⁷ *Ibid* ss 52(1), 52(6)–(7), 56(1), 57(1), 58.

⁴⁸ See Gordon Bazemore, ‘Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration’ (1998) 41(6) *American Behavioral Scientist* 768, 770, 775, 779.

⁴⁹ *Young Offenders Act 1997* (n 25) ss 5(1)–(2).

⁵⁰ *Ibid* ss 47(1)(i), 48(3), 52(1), 52(4)–(5).

⁵¹ Corrective Services NSW, *Restorative Justice Service* (Policy No D23/1524568, 28 November 2023) 4, 7, 17, 23. Psychological pain and recovery have become a capitalisable industry, and emotional capacity has become a form of capital: Eva Illouz, ‘Suffering, Emotional Fields, and Emotional Capital’ in *Cold Intimacies: The Making of Emotional Capitalism* (Polity Press, 2007) 40, 41–2.

⁵² See Jane J Bolitho, ‘Restorative Justice: The Ideals and Realities of Conferencing for Young People’ (2012) 20(1) *Critical Criminology* 61, 65–6.

courts to examine ‘victim reports’ and ‘impact statements’; however, those statements are a matter of the judicial officer’s judgement, not that of the community itself.⁵³ Thus, restorative practice can be pre-filtered via state analysis.

The *Youth Justice Regulations 2006* (NT) codify ‘community work orders’, prescribing hours, supervision, and behavioural criteria.⁵⁴ What is presented as reparation or service becomes a metric of compliance — a measurable proxy for moral transformation.⁵⁵ The *Sentencing Act 1995* (NT) reinforces this logic by authorising community correction orders subject to statutory good-behaviour and program conditions that extend punishment into the domains of supervision, rehabilitation, and behavioural reform, rendering correction measurable through official criteria of compliance.⁵⁶ The bureaucratic form, while appearing inclusive, reproduces a colonial logic of translation: emotion is rendered legible only through state reporting.

This system performs a dual movement — it civilises deviance through care and obscures control through empathy. The administrative language of ‘healing’, ‘closure’, and ‘respectful community involvement’ aligns closely with what the *Northern Territory Aboriginal Justice Agreement 2021–2027* (*Aboriginal Justice Agreement*) presumes cultural healing partnerships.⁵⁷ Yet these partnerships are bound by governmental oversight: cultural repair is authorised only when it serves policy objectives such as reducing recidivism or promoting ‘community harmony’.⁵⁸ Restoration thus becomes not the opposite of punishment but its affective extension.

⁵³ *Youth Justice Act 2005* (n 40) ss 76–80.

⁵⁴ *Youth Justice Regulations 2006* (NT) regs 5–21; *Youth Justice Act 2005* (n 40) ss 94(7), 95.

⁵⁵ *Youth Justice Regulations 2006* (n 54) regs 5–21; *Youth Justice Act 2005* (n 40) ss 94(7), 95.

⁵⁶ *Sentencing Act 1995* (NT) ss 30–4.

⁵⁷ Department of the Attorney-General and Justice (NT), *Northern Territory Aboriginal Justice Agreement 2021–2027* (Agreement, 2021) 8–9 (*Aboriginal Justice Agreement*). However, it is critical to note that ‘healing’ is not a neutral therapeutic term but one that originates from Aboriginal English, deeply rooted in the experiences and policy advocacy of the Stolen Generations and their descendants (for example, the Lowitja Institute houses a lot of these policy documents): see ‘Lowitja Library’, *Lowitja Institute* (Web Page) <<https://lowitja.org.au>>. The language was misappropriated into state-led administrative frameworks, illustrating how culturally embedded concepts are recontextualised — stripped of their political and historical significance — and redeployed to obscure settler-state governance.

⁵⁸ Department of the Attorney-General and Justice (NT), *Northern Territory Aboriginal Justice Agreement Implementation Plan 2021–2027* (Implementation Plan, 2021) 6–7, 11–13; Department of the Attorney-General and Justice (NT), *Northern Territory Aboriginal Justice Agreement Action Plan 2021–2022* (Action Plan, 2021) 5–6.

C *The Paternal Logic of Protection and Rehabilitation*

The broader NSW legal landscape shows how protection can take on a paternalistic logic through complementary statutes. The *Children (Criminal Proceedings) Act 1987* (NSW) mandates that ‘children are to have the benefit of special procedures’ and empowers courts to impose ‘good behaviour bonds’, ‘probation’, or ‘community service orders’.⁵⁹ These provisions are protective in purpose and may provide important safeguards for children, but they also risk reproducing a logic in which young people are approached as objects of supervision and correction rather than fully as rights-bearing subjects.⁶⁰ Protection becomes a justification for surveillance, mirroring the paternalism embedded in the *Young Offenders Act* itself.

The *Children and Young Persons (Care and Protection) Act 1998* (NSW) extends this governance logic beyond the criminal process by recoding family conflict, inadequate supervision, and behavioural concerns as matters of care, protection, and welfare.⁶¹ Its guiding concern with the child’s ‘best interests’ and ‘safety, welfare and well-being’ shows how protective intervention can become a technique for managing risk in and around youth justice.⁶² It forms part of the wider NSW legal ecology, in which young people are constructed less as autonomous, rights-bearing participants than as vulnerable subjects requiring supervision, correction, and therapeutic management.⁶³

Parallel tendencies are evident in the *Crimes (Sentencing Procedure) Act 1999* (NSW), which incorporates rehabilitation, accountability, and recognition of harm to the victim and community as statutory sentencing objectives.⁶⁴ Here, restorative language is integrated into mainstream penal discourse, transforming rehabilitation into an obligation of self-improvement and reparation into a duty owed to society. This merging of moral and penal logics demonstrates the managerial nature of

⁵⁹ *Children (Criminal Proceedings) Act 1987* (NSW) ss 6, 33.

⁶⁰ This argument is not intended to deny that child-specific procedures are protective in purpose or that they may secure meaningful safeguards for children. Rather, it points to a familiar tension in child justice: protective and welfare-oriented frameworks may safeguard children’s developmental interests, while also authorising intrusive supervision when children are constructed primarily as vulnerable objects of correction rather than as rights-bearing participants: Yannick van den Brink, ‘Equality in the Youth Court: Meaning, Perceptions and Implications of the Principle of Equality in Youth Justice’ (2022) 22(3) *Youth Justice* 245.

⁶¹ *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 8, 9, 38A, 71(1)(e)–(f), 111, 113.

⁶² *Ibid* ss 9–10.

⁶³ See John Christman, ‘Relational Autonomy and the Social Dynamics of Paternalism’ (2014) 17(3) *Ethical Theory and Moral Practice* 369.

⁶⁴ *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 3A(d), (e), (g).

Australian RJ — its design to obscure punishment by embedding it in a discourse of reform, which is a technology of power.

The acts also collectively define the family and community as co-responsible units. In this way, the framework does not treat the child as an isolated offender, but draws parents, responsible adults, and family members into the conferencing process and situates the child within a wider regime of supervised responsibility.⁶⁵ Thus, what begins as ‘support’ for reintegration ultimately becomes a disciplinary apparatus diffused across social networks. Responsibility is collectivised, but accountability flows downward — from the state to the family to the child — reproducing a vertical hierarchy under the guise of partnership.

The NT regime radicalises this colonality through its fusion of family responsibility, welfare surveillance, and penal correction. Part 6A of the *Youth Justice Act 2005* (NT) provides for ‘family responsibility agreements’, under which an appropriate Agency may enter into agreements with parents where a youth has demonstrated behavioural problems and family circumstances are considered to have contributed to those problems.⁶⁶ These agreements, though formally non-enforceable, operate as quasi-legal instruments: failure to comply can trigger renewed state intervention under the *Care and Protection of Children Act 2007* (NT).⁶⁷

The logic of ‘therapeutic correction’ extends to the detention regime. Detention is justified as a means to ensure ‘health, education and self-respect’, while the *Bail Act 1982* (NT) allows the imposition of conditions.⁶⁸ Together, these provisions embed coercion within care. Young people are not punished in opposition to welfare — they are rehabilitated through subjection. They reveal a broader NT youth justice ecology in which care, rehabilitation, and cultural repair are attached to coercive supervision. RJ therefore operates within, rather than against, a penal-welfare framework that can recast punishment in therapeutic and culturalised terms.

Given that almost all criminalised children in the NT are Aboriginal or Torres Strait Islander, the very requirement to participate in state-mandated ‘cultural awareness’ programs is especially egregious.⁶⁹ The same settler-colonial system that removes Indigenous children from Country, kin, and culture then mandates they perform ‘cultural awareness’ from outside their cultural home.⁷⁰ What is framed as cultural

⁶⁵ *Young Offenders Act 1997* (n 25) ss 47; *Children (Criminal Proceedings) Act 1987* (n 59) ss 33, 41.

⁶⁶ *Youth Justice Act 2005* (n 40) ss 140D–140F.

⁶⁷ *Ibid* ss 140F(1)–(2). See also *Care and Protection of Children Act 2007* (NT) s 32.

⁶⁸ *Bail Act 1982* (NT) ss 24A(2)(i), 27(1)–(2), 27A(1), 28(1)–(2A).

⁶⁹ *NT Youth Detention Royal Commission Final Report* (n 26); Boffa and Mackay (n 26).

⁷⁰ William Tilmouth et al, ‘Apmerengentyele: Our Systems, Our Children, Our Safety, Our Wellbeing’ (2025) 9(3) *Genealogy* 095:1–21, 8, 11, 14; Anne Maree Payne, “‘Never Again’? Resonances of the

restoration is in fact a form of cultural management — culture rendered legible, acceptable, and governable within state-defined parameters, rather than embodied, relational, and sovereign.

D *Indigenous Inclusion and the Limits of Voluntariness*

The *Young Offenders Act 1997* (NSW) explicitly recognises ‘the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system’ and declares the need to address it using warnings, cautions, and conferences.⁷¹ This acknowledgment, however, is framed in procedural rather than structural terms. The Act treats inequality as a matter of access to diversion, not as a symptom of systemic injustice. However, ‘diversion’ is absorbed back into the architecture of state control, functioning less as an alternative to punishment than as a re-routing of young people through scripted rituals of compliance within the criminal justice system.⁷² Its call for ‘culturally appropriate’ conferencing allows the inclusion of ‘respected community members’ in proceedings but does not alter the underlying power dynamics.⁷³ Indigenous participation thus risks functioning symbolically, incorporating Indigenous presence into the process while leaving the settler legal framework of confession, compliance, and final authority intact.⁷⁴

Voluntariness, another central principle of RJ, is also constrained by institutional design.⁷⁵ A child needs to consent to a caution or conference, yet refusal can trigger prosecution.⁷⁶ Participation is framed as a choice within tightly bounded parameters: the young people may choose only between compliance and escalation. This conditional voluntariness converts consent into a mechanism of control: the child’s choice to participate becomes evidence of responsibility, while refusal risks escalation into formal prosecution. The very act of choosing to participate demonstrates the child’s internalisation of responsibility — the ideal subject of restorative governance.

Past in Contemporary Aboriginal and Torres Strait Islander Child Removal’ (2024) 16(3) *Cosmopolitan Civil Societies* 104, 108, 110–11, 114.

⁷¹ *Young Offenders Act 1997* (n 25) s 7(h).

⁷² Chris Cunneen, Rob White and Kelly Richards, ‘Restorative Justice and Juvenile Conferencing’ in *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 5th ed, 2015) 336, 348, 350–1, 355–6.

⁷³ *Young Offenders Act 1997* (n 25) ss 34(1)(a)(v), 47(2)(a).

⁷⁴ Gerald Taiaiake Alfred, ‘Colonialism and State Dependency’ (2009) 5(2) *International Journal of Indigenous Health* 42.

⁷⁵ Adam Crawford and Pablo Pineda Rojas, ‘Restorative Justice, Voluntariness and the Ongoing Challenges of Institutionalisation’ (2024) 7(3) *International Journal of Restorative Justice* 401.

⁷⁶ *Young Offenders Act 1997* (n 25) ss 19(c), 36(c), 9(2).

In the NT context, Indigenous ‘inclusion’ is explicitly codified yet structurally colonised. Part 5, Division 4 of the *Youth Justice Act 2005* (NT) introduces the ‘community court sentencing procedure’, requiring courts to consider Aboriginal experience reports and permitting consideration of responses from Law and Justice Groups.⁷⁷ Theoretically, this gestures toward the right to self-determination; in practice, however, it risks functioning as a form of symbolic incorporation, as Aboriginal knowledge and community input are invited into the sentencing process without displacing the court’s ultimate authority.⁷⁸ These cultural mechanisms are inserted within judicial processes without altering their underlying logic of authority. ‘Culture’ becomes evidence, not law.

The *Aboriginal Justice Agreement* further advances this aesthetic of ‘inclusion’.⁷⁹ It promises ‘community-led justice’ and ‘cultural healing’, yet the operative verbs throughout the document — ‘collaborate’, ‘partner’, and ‘build capacity’ — reveal its managerial core.⁸⁰ Aboriginal justice is recognised insofar as it can be administered, audited, and reported.⁸¹ This is the nationalisation and aestheticisation of culture: the transformation of Indigenous restoration into a measurable policy deliverable.

In this sense, the NT’s RJ model serves as a form of colonial reconciliation through governance. It invites Indigenous communities to co-produce legitimacy for the state’s justice apparatus, rather than transforming it. The affective vocabulary of healing and respect thus conceals the enduring asymmetry of power. RJ, here, is not decolonisation — it is the emotional grammar of settler sovereignty.

E Conclusion: Restorative Justice as Administrative Governance

In the NSW context, the youth RJ system’s efficiency-oriented structure — its deadlines, eligibility rules, and procedural safeguards — ensures administrative predictability while constraining the spontaneity that genuine restoration would require. Victim inclusion is choreographed, family participation is instrumentalised, and Indigenous engagement is tokenised. What emerges is a sophisticated model of governance through empathy: a regime that speaks the language of healing but practices the logic of management. In this sense, the NSW legislative framework reveals that RJ’s moral aspiration has always been intertwined with the state’s moralising discourse. Its language of healing and responsibility does not escape

⁷⁷ *Youth Justice Act 2005* (n 40) ss 80A–80E.

⁷⁸ Thalia Anthony and Will Crawford, ‘Northern Territory Indigenous Community Sentencing Mechanisms: An Order for Substantive Equality’ (2013) 17(2) *Australian Indigenous Law Review* 79.

⁷⁹ See *Aboriginal Justice Agreement* (n 57).

⁸⁰ *Ibid* 8, 14, 17–18.

⁸¹ *Ibid* 24–5.

state power; it renders that power more humane, affective, and administratively acceptable.

In the NT, this fusion becomes explicit: the state governs through care that disciplines, healing that normalises, and culture that authorises. What appears as the restoration of community is, in fact, the restoration of state authority through new moral vocabularies. The restorative ideal, far from existing outside power, becomes its most refined expression — humanising domination through empathy and embedding colonial sovereignty in the language of repair.

The acts construct a continuum from welfare to punishment, where restorative ideals are subsumed within bureaucratic rationalities. Across these texts, the language of responsibility, rehabilitation, and care performs a technology of power: it transforms control into compassion and compliance into consent. They stand as the critical examples of how settler-colonial legal systems convert discourses of repair into instruments of regulation — where caring becomes a form of control and reconciliation a mode of governance.

III HARMONY WITHOUT DIALOGUE: STATE CAPTURE OF YOUTH RESTORATIVE JUSTICE IN CHINA

Although China's legal framework for juvenile justice procedures (centred on the *Criminal Procedure Law*, the *Law on the Protection of Minors*, the *Law on the Prevention of Juvenile Delinquency*, and the *Community Corrections Law*) does not explicitly use the term 'restorative justice', its core concepts (education, correction, reintegration, and restoration) are significantly consistent with the restorative path.⁸² An in-depth analysis of these legal texts can reveal a set of structures that deeply reflect state dominance, institutionalised frameworks, and potential reproduction of inequality.⁸³

⁸² 《中华人民共和国未成年人保护法》 [Law of the People's Republic of China on the Protection of Minors] (People's Republic of China) National People's Congress (NPC) Standing Committee, as amended 26 April 2024, arts 110, 113, 116 ('*Protection Law of Minors*'); 《中华人民共和国预防未成年人犯罪法》 [Law of the People's Republic of China on the Prevention of Juvenile Delinquency] (People's Republic of China) NPC Standing Committee, as revised 26 December 2020, arts 1–4, 31, 38–45 ('*Prevention Law of Juvenile Delinquency*'); 《中华人民共和国社区矫正法》 [Community Corrections Law of the People's Republic of China] (People's Republic of China) NPC Standing Committee, Order No 40, 28 December 2019, arts 1–3, 23, 28, 36, 42, 52 ('*Community Corrections Law*'); 《中华人民共和国刑事诉讼法》 [Criminal Procedure Law of the People's Republic of China] (People's Republic of China) National People's Congress, as amended 26 October 2018, arts 277, 279, 282–4, 288–90 ('*Criminal Procedure Law*').

⁸³ See 苏镜祥 [Su Jingxiang] and 马静华 [Ma Jinghua], 《未成年人刑事和解——基于中国实践的考察和分析》 [Victim Offender Mediation for the Juvenile: Based on the Surveys and Analyses of China's Practice] (2009) 3 四川大学学报(哲学社会科学版) *Journal of Sichuan University (Social Science Edition)* 118.

Unlike Australia's fragmented federal youth justice landscape, China's juvenile justice framework operates within a unitary legal and policy architecture characterised by national legislation and central guidance.⁸⁴ For this reason, the Chinese analysis does not select sub-national jurisdictions in the same way as the Australian part does. Instead, it focuses on national legislation, judicial interpretations, procuratorial and court procedural rules, implementation measures, opinions, and other official normative and policy documents issued by central legal and governmental institutions, while drawing on selected local implementation materials to illustrate the practical operationalisation of centrally formulated rules. These materials collectively shape how juvenile justice rules are formulated, interpreted, and implemented. Although not all these instruments have the same formal legal status, they remain highly authoritative in structuring how statutory rules are applied by local judicial, procuratorial, and administrative bodies.⁸⁵

A *Predefined and Highly Regulated Participant Roles*

In China's legal context, juveniles refer to individuals under the age of eighteen, while criminal responsibility generally begins at the age of sixteen.⁸⁶ The state's

⁸⁴ Wei Liu, Toby S James and Caixia Man, 'Governance and Public Administration in China' (2022) 43(3) *Policy Studies* 387, 389–90; Hsin Hsien Wang and Shan Yun Shi, 'Comprehensive Law-Based Governance in China? Legislating Authoritarianism in the Xi Jinping Era' (2022) 11(2) *Journal of Contemporary East Asia Studies* 195, 198–9, 209.

⁸⁵ This is important in the Chinese context because judicial interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate have legal effect, while other official normative and policy documents, including procedural rules, implementation measures, and opinions, may not necessarily have the same formal status but nevertheless carry significant practical force in guiding the interpretation, operationalisation, and enforcement of statutory rules by courts, procuratorates, and administrative authorities at the local level: 《中华人民共和国人民法院组织法》 [Organic Law of the People's Courts of the People's Republic of China] (People's Republic of China) NPC Standing Committee, as revised 26 October 2018, art 18; 《最高人民法院关于司法解释工作的规定》 [Provisions of the Supreme People's Court on Judicial Interpretation Work] (People's Republic of China) Supreme People's Court, Fa Fa [2021] No 20, 9 June 2021, arts 2, 5–6; 《中华人民共和国人民检察院组织法》 [Organic Law of the People's Procuratorates of the People's Republic of China] (People's Republic of China) NPC Standing Committee, as revised 26 October 2018, arts 23, 31; 《最高人民法院司法解释工作规定》 [Provisions of the Supreme People's Procuratorate on Judicial Interpretation Work] (People's Republic of China) Supreme People's Procuratorate, 13 May 2019, arts 5–6.

⁸⁶ Children aged between fourteen and sixteen can also be held criminally responsible for serious violent offences, including intentional homicide, intentional injury causing serious injury or death, rape, robbery, drug trafficking, arson, explosion, and placing dangerous substances. Moreover, children aged between twelve and fourteen may bear criminal responsibility where they commit intentional homicide or intentional injury causing death, or causing serious injury resulting in severe disability by especially cruel means, where the circumstances are vile and prosecution is approved by the Supreme People's Procuratorate: 《中华人民共和国刑法》 [Criminal Law of the People's Republic

intervention can occur much earlier, through preventive and educational measures defined in the *Law on the Protection of Minors* and the *Law on the Prevention of Juvenile Delinquency*.⁸⁷ Against this background, legal texts strictly presuppose and regulate the role positioning and interaction methods of 'juvenile suspects or defendants' and 'victims'.

The first notable aspect is the presupposition of 'correctability' in the youth's role. The legislation positions juveniles as objects of 'education, persuasion, and salvation'.⁸⁸ This presupposes their essential 'plasticity' and 'need for correction'. For example, the core logic of conditional non-prosecution and community correction is that the state guides them to 'return to the right path' by setting conditions, probation periods, and supervision and inspection.⁸⁹ Their identity is, first of all, 'a person in need of correction', and then the bearer of responsibility.

At the same time, the victim's role is rendered passive and institutionalised. In the criminal reconciliation procedure, although the victim is the key party to the reconciliation, their role is strictly limited to the 'forgiveness' link.⁹⁰ The law requires that 'the criminal suspect or defendant sincerely repents, obtains the victim's forgiveness through compensation for losses, apology, etc., and the victim voluntarily reconciles'.⁹¹ However, after the so-called 'voluntary reconciliation', the effectiveness and consequences of the reconciliation (the suggestion or decision to treat leniently) are reviewed, validated, and ultimately determined by public security, procuratorial organs, and judicial authorities.⁹² The victim lacks the right to influence the process and the final judicial discretion effectively, and their 'forgiveness' is more of an institutionalised prerequisite for the state judicial organs to deal leniently.⁹³ Article 110 of the *Law on the Protection of Minors* further provides that underage victims and witnesses generally do not appear in court to testify, and that where their appearance is necessary, protective measures such as privacy-protecting technical means and psychological intervention should be adopted.⁹⁴ This

of China] (People's Republic of China) National People's Congress, as amended 29 December 2023, art 17.

⁸⁷ See *Protection Law of Minors* (n 82) arts 113, 116. See also *Prevention Law of Juvenile Delinquency* (n 82) arts 1–4, 31, 38–45.

⁸⁸ *Criminal Procedure Law* (n 82) art 277; *Protection Law of Minors* (n 82) art 113.

⁸⁹ *Criminal Procedure Law* (n 82) arts 282–4; *Community Corrections Law* (n 82) arts 3, 52.

⁹⁰ *Criminal Procedure Law* (n 82) arts 288–90.

⁹¹ *Ibid* art 288.

⁹² *Ibid* arts 289–90.

⁹³ See Benjamin L Liebman, 'Leniency in Chinese Criminal Law? Everyday Justice in Henan' (2015) 33(1) *Berkeley Journal of International Law* 153, 180–1, 186.

⁹⁴ *Protection Law of Minors* (n 82) art 110.

protective framework reduces their direct exposure to adversarial courtroom settings, but it may also limit the space for direct narrative participation.

A third characteristic is the state's mediation of interaction between the two roles. Direct contact and dialogue space between victims and perpetrators is almost non-existent in legal texts. Reconciliation requires the preparation of an agreement under the 'hosting' of public security and judicial organs.⁹⁵ 'Repairing social relations' in community corrections is mainly reflected in 'participating in public welfare activities' rather than directly promoting dialogue and emotional repair between the victim and the juvenile.⁹⁶ State institutions (judicial organs, community correction institutions) have become the core mediators and controllers of role interaction.⁹⁷

*B The Institutionalised Framework of 'Repair', 'Reconciliation', and
'Responsibility'*

The core concepts of RJ are incorporated into a strict institutionalised framework in Chinese legal texts, and their connotations are defined and limited by the state. The path of 'repair' is nationalised and de-personalised: emotions are not eliminated but extracted from genuine relational contexts and reinserted as scripted performances — quantified, audited, and used as indicators of compliance rather than as expressions of healing.⁹⁸ 'Repair' mainly refers to the abstract restoration of social relations and the reaffirmation of state legal order, rather than the healing of emotional trauma between individuals.

Community correction subjects are organised to participate in public welfare activities to 'repair social relations and cultivate a sense of social responsibility'.⁹⁹ For example, community correction subjects were organised to participate in disaster relief after a landslide — performing tasks such as transporting supplies, setting up emergency shelters, and providing logistical support, which were

⁹⁵ *Criminal Procedure Law* (n 82) art 289.

⁹⁶ *Community Corrections Law* (n 82) art 42.

⁹⁷ 江山河 [Jiang Shanhe] and 张健 [Zhang Jian] (n 6) 112.

⁹⁸ Yuchen Meng and Jize Jiang, 'Visible Body and Invisible Mind: Bureaucratic Performance, Self-Rehabilitation, and the Machinery of Chinese Community Corrections' (2024) *Criminology & Criminal Justice* 1, 8, 12, 18; Jize Jiang and Xuan Chen, 'Rehabilitation as Performance: Symbolizing Penal Welfare in Chinese Community Corrections' (2025) 65(4) *British Journal of Criminology* 840, 851–3. See 《关于贯彻落实〈中华人民共和国社区矫正法实施办法〉的实施细则》 [Detailed Rules for Implementing the Measures on the Implementation of the Community Corrections Law of the People's Republic of China] (People's Republic of China) Beijing High People's Court, Beijing People's Procuratorate, Beijing Municipal Public Security Bureau and Beijing Municipal Bureau of Justice, 23 November 2021, art 92.

⁹⁹ *Community Corrections Law* (n 82) art 42.

formally recorded as evidence of ‘repair’, ‘repentance’, and ‘social reintegration’.¹⁰⁰ They function as demonstrations of compliance, civic loyalty, and moral transformation under state supervision. Rather than treating reconciliation as an autonomous process of relational repair, Article 290 of the *Criminal Procedure Law* converts it into a legal trigger for state-administered leniency, including recommendations for lenient punishment, non-prosecution in eligible minor cases, and lenient sentencing.¹⁰¹ The criteria for ‘repair’ are the compliance of behaviour set by the state (compliance with inspection regulations, participation in public welfare activities) and repentance.¹⁰²

Equally, ‘reconciliation’ operates as an instrumental and conditional mechanism. Criminal reconciliation is strictly limited to specific types of minor crimes (caused by civil disputes, with a possible sentence of less than three years; negligent crimes with a sentence of less than seven years) and excludes those who have committed intentional crimes within five years.¹⁰³ Its initiation requires the fulfilment of the three conditions of ‘sincere repentance’, ‘obtaining forgiveness’, and ‘voluntary reconciliation’, and its ‘voluntariness and legality’ shall be reviewed by state organs.¹⁰⁴ The core value of reconciliation is positioned as the legal basis for judicial organs to grant leniency.¹⁰⁵ It is an instrumental way for the state to implement the criminal policy of ‘leniency and severity’ and to decriminalise or lighten the punishment of specific cases, rather than an independent, autonomous procedure centred on the restoration of the relationship between the parties.

Finally, ‘responsibility’ is not framed as an open-ended ethical relation to the victim, but as compliance with state-defined correctional expectations. The ‘responsibility’ of juveniles is mainly expressed in legal discourse as accepting the state’s education, persuasion, and rescue policies, obeying supervision and management, complying with inspection regulations, and participating in educational correction activities.¹⁰⁶ Its core is to be responsible for the state’s legal authority and the set correctional norms, which are manifested as ‘obedience’ and ‘acceptance of reform’. Although it also includes compensation for losses, this is more of a necessary condition for

¹⁰⁰ See ‘四川省宜宾市筠连县司法局积极组织社区矫正对象参与灾害救援’ [The Justice Bureau of Junlian County, Yibin City, Sichuan Province, Actively Organised Community Correction Subjects to Participate in Disaster Relief], 中华人民共和国司法部 [Ministry of Justice of the People’s Republic of China] (Web Page, 7 April 2025) <www.moj.gov.cn>.

¹⁰¹ *Criminal Procedure Law* (n 82) art 290.

¹⁰² *Ibid* art 282. *Community Corrections Law* (n 82) art 28.

¹⁰³ *Criminal Procedure Law* (n 82) art 288.

¹⁰⁴ *Ibid* art 289.

¹⁰⁵ *Ibid* art 290.

¹⁰⁶ *Criminal Procedure Law* (n 82) arts 277, 283; *Community Corrections Law* (n 82) arts 4, 23, 36.

obtaining forgiveness and then obtaining lenient treatment from the state, rather than the core or endpoint of responsibility.¹⁰⁷

C *Compressed Space for Personal Narratives and Emotional Complexity*

The procedural framework constructed by legal texts greatly compresses the space for young people and victims to express personal narratives and emotional complexity. Personal narratives are displaced by procedural formalisation, as the legal process directs attention away from lived experience and emotional complexity toward facts, risk factors, and correctional needs. Social investigation focuses on objective factors such as ‘growth experience, causes of crime, guardianship education’.¹⁰⁸ Its function is primarily decision-oriented: it translates the juvenile’s background, family environment, and causes of offending into information for case handling, education, and correction, rather than creating a dialogical space for the juvenile’s own narrative or emotional complexity.¹⁰⁹ Although the interrogation and trial procedures require the presence of legal representatives, the core purpose is to ensure the legality of litigation rights and procedures, and the focus is on ascertaining facts and educating, rather than listening to their deep narratives about criminal motives and inner struggles.¹¹⁰ Although psychological intervention is mentioned, its purpose is ‘correction’ and ‘return’, serving the transformation goals set by the state, rather than accepting their emotional complexity.¹¹¹

Furthermore, victim narratives are marginalised under the guise of protection. As mentioned above, victims that are minors are typically exempt from appearing in court, and their statements are either written or narrated by others.¹¹² Even if they appear in court, they emphasise the use of technical means to protect privacy and psychological intervention.¹¹³ While this protective measure avoids secondary harm, it also significantly reduces the victim’s opportunity to directly, fully, and individually narrate their experience and articulate their emotional responses within the formal judicial setting, thereby limiting their expressive participation in the process. Their

¹⁰⁷ *Criminal Procedure Law* (n 82) art 288.

¹⁰⁸ *Ibid* art 279.

¹⁰⁹ See 郭涛 [Guo Tao], 《涉罪未成年人家庭教育分析——以一百二十二份社会调查报告为样本》 [Analysis of Family Education of Minors Involved in Crime: Based on 122 Social Investigation Reports], 检察日报·未来周刊·实务 [Procuratorial Daily, Future Weekly — Practice] (Web Page, 29 June 2023) <www.spp.gov.cn>.

¹¹⁰ *Criminal Procedure Law* (n 82) art 281.

¹¹¹ *Protection Law of Minors* (n 82) art 116.

¹¹² *Ibid* art 110.

¹¹³ *Ibid*.

narrative is simplified to an ‘understanding’ factor that affects sentencing or reconciliation.

The legal text lacks regulations or guidance on how to safely and effectively guide and accommodate the complex emotions (such as anger, regret, fear, and shame) of the parties (especially minors involved in crimes) in the procedure.¹¹⁴ The focus of the procedure is on behavioural performance (whether repentance is shown, whether regulations are followed) and fact-finding. The emotional dimension is regarded as an object that needs intervention (psychological correction) or protection (avoiding secondary harm to the victim), rather than a necessary component that the procedure itself needs to accommodate and deal with actively.

D *Individual Instrumentalisation*¹¹⁵: A Carrier Serving Policy Goals

Juveniles are largely regarded as tools to achieve national governance goals via prioritisation of specific policy goals. The law explicitly emphasises that its goals are to ‘ensure the healthy growth of minors’ and ‘prevent and reduce crime’.¹¹⁶ However, studies indicate that many community correction programs for minors remain primarily punitive and supervisory rather than genuinely rehabilitative.¹¹⁷ In this context, ‘healthy growth’ is not treated as an open-ended welfare ideal but is legally framed through the state’s objectives of prevention, correction, and social order.¹¹⁸ The concept operates less as an empowerment-oriented vocabulary than as a normative standard through which young people are evaluated, supervised, and redirected toward state-defined developmental goals.

For instance, the official claim that most minors subject to conditional non-prosecution have ‘returned to the right path’ reveals how success is measured against a state-defined image of normative reintegration: the young person is

¹¹⁴ See *Criminal Procedure Law* (n 82) arts 279, 281; *Protection Law of Minors* (n 82) arts 110, 116; *Community Corrections Law* (n 82) arts 28, 36, 42. These provisions emphasise social investigation, procedural legality, psychological intervention, protection of minors, and correctional compliance, but do not establish a dialogical framework for the expression and accommodation of complex emotions within restorative-type encounters.

¹¹⁵ Instrumentalisation is used here in both a moral-philosophical and governmental sense: it refers to the reduction of persons into means for the achievement of external institutional ends, and to the governance practices through which subjects are mobilised to fulfil state-defined objectives: see generally Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed Mary Gregor and Jens Timmermann, tr Mary Gregor (Cambridge University Press, 2nd rev ed, 2012) ch 2. See also Rose and Miller (n 45).

¹¹⁶ *Prevention Law of Juvenile Delinquency* (n 82) art 2; *Community Corrections Law* (n 82) art 1.

¹¹⁷ Enshen Li, ‘China’s Community Corrections: An Actuarial Model of Punishment’ (2015) 64(1) *Crime, Law and Social Change* 1, 5, 19.

¹¹⁸ *Prevention Law of Juvenile Delinquency* (n 82) arts 1, 2, 4, 28, 31, 41; *Community Corrections Law* (n 82) arts 1, 3, 4; *Criminal Procedure Law* (n 82) art 277.

deemed restored when they demonstrate correction, supervision-compliance, and reintegration, rather than when repair is defined through dialogue or by the participants themselves.¹¹⁹ Juveniles are regarded as carriers and objects of achieving grand policy goals such as ‘education and rescue’, ‘reducing crime rates’, and ‘promoting social harmony and stability’.¹²⁰ Their individual needs, rights, and development must be subject to or integrated into the framework of these national goals. The ultimate goal of community correction is to ‘promote the smooth integration of community correction subjects into society, prevent and reduce crime’, thereby positioning community correction as a means of securing broader social order.¹²¹

Moreover, rights protection assumes an instrumental rather than an emancipatory role. Although the law emphasises the protection of minors’ litigation rights, non-discrimination, privacy rights, and other human rights protection clauses, the implementation of these rights often remains closely tied to the state’s objectives of education, supervision, and behavioural regulation.¹²² For example, even the requirement that juvenile community correction groups include personnel familiar with minors’ physical and psychological characteristics is framed within a correctional apparatus designed to assess developmental needs, identify causes of offending, supervise behaviour, and implement targeted transformation.¹²³ Although presented as a protective measure, this arrangement also shows how rights protection is absorbed into a correctional framework that marks young people as objects of assessment, supervision, and behavioural transformation. This creates a deeper paradox: the same legal framework that claims to protect young people may also expose them to the social stigma, exclusion, and diminished life prospects produced or intensified by the state’s own correctional and criminal justice apparatus. In this sense, the state’s ‘protective’ role serves as a compensatory

¹¹⁹ ‘逾97%被附条件不起诉未成年人走上正途’ [Over 97% of Minors Given Conditional Non-Prosecution Have Successfully Returned to the Right Path], 中华人民共和国最高人民检察院 [(People’s Republic of China) Supreme People’s Procuratorate] (Web Page, 28 October 2022) <www.spp.gov.cn>.

¹²⁰ See *Criminal Procedure Law* (n 82) arts 277, 282–4. See also *Community Corrections Law* (n 82) arts 1, 3, 11, 13, 35–43, 52; *Protection Law of Minors* (n 82) art 113.

¹²¹ *Community Corrections Law* (n 82) art 1.

¹²² *Ibid* arts 54, 57; *Criminal Procedure Law* (n 82) arts 277, 286; *Protection Law of Minors* (n 82) arts 103, 113.

¹²³ *Community Corrections Law* (n 82) art 52; 《中华人民共和国社区矫正法实施办法》 [Measures on the Implementation of the Community Corrections Law of the People’s Republic of China] (People’s Republic of China) Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security and Ministry of Justice, Si Fa Tong [2020] No 59, 18 June 2020, arts 19, 21–4, 32–3, 55 (‘*Community Corrections Law Implementation Measures*’).

response to injuries generated by the very system that claims to educate, correct, and save them.¹²⁴

In the Chinese system design, the roles and functions of participants such as young people, victims, guardians, and social organisations are pre-set. Youths are required to ‘admit their guilt and repent’, ‘accept education and correction’, and ‘obey management’, with their cooperation serving as a prerequisite for achieving the state’s correctional goals.¹²⁵ Victims’ ‘forgiveness’ functions as one of the legitimate bases for the state’s lenient treatment of offenders.¹²⁶ Guardians bear legal obligations to ‘strengthen discipline’, ‘cooperate with supervision and inspection’, and ‘perform guardianship responsibilities’, effectively acting as extensions of the state’s correctional authority.¹²⁷ Meanwhile, social organisations and social workers, though ‘encouraged and supported’ to participate, must operate under the leadership and within the framework of specialised state institutions such as judicial or community correction bodies.¹²⁸ Their professional services — ranging from ‘psychological intervention, legal aid, social investigation, social supervision, to educational correction’ — serve primarily as tools assisting the state in fulfilling its correctional objectives.¹²⁹

E Conclusion: Restorative Justice as State-Led Correctional Governance

China’s legal texts construct a distinctive discourse on juvenile justice. It has absorbed some core values of RJ at the conceptual level, such as diversion from formal punishment, educational correction, return to society, and relationship repair.¹³⁰ Yet, once translated into legal and institutional arrangements, these values are reconfigured through state dominance, procedural rigidity, and discursive instrumentalisation.

First, the system operates within a state-led institutional framework. Concepts such as ‘repair’, ‘reconciliation’, and ‘responsibility’ are strictly defined and procedurally constrained. Rather than functioning as autonomous or dialogical practices, they are embedded within the national punishment and community correction systems,

¹²⁴ See Zachary R Rowan et al, ‘Labeling Effects of Initial Juvenile Justice System Processing Decision on Youth Interpersonal Ties’ (2023) 61(4) *Criminology* 731. See also Jo Deakin, Claire Fox and Raquel Matos, ‘Labelled as “Risky” in an Era of Control: How Young People Experience and Respond to the Stigma of Criminalized Identities’ (2022) 19(4) *European Journal of Criminology* 653.

¹²⁵ *Community Corrections Law* (n 82) arts 23, 28, 36. See also *Criminal Procedure Law* (n 82) art 282.

¹²⁶ *Criminal Procedure Law* (n 82) arts 288, 290.

¹²⁷ *Ibid* art 283; *Community Corrections Law* (n 82) art 53.

¹²⁸ *Protection Law of Minors* (n 82) art 116; *Community Corrections Law* (n 82) arts 11, 13, 40, 56.

¹²⁹ *Protection Law of Minors* (n 82) art 116.

¹³⁰ *Criminal Procedure Law* (n 82) arts 277, 282–284, 288–290; *Community Corrections Law* (n 82) arts 1, 3, 36, 42, 52; *Protection Law of Minors* (n 82) art 113; *Prevention Law of Juvenile Delinquency* (n 82) arts 1, 2, 4.

serving as institutional tools for achieving state governance objectives such as 'education first, punishment second', 'crime prevention', and 'social harmony'.¹³¹

Second, the procedural structure compresses individual narratives and marginalises emotional complexity. Highly standardised procedures, the restriction of victims' in-court presence, and limited engagement with the subjective experiences of juveniles collectively narrow the space for personal expression. The procedural emphasis rests on behavioural compliance, fact-finding, and policy fulfilment, rather than the dialogical exploration of emotions and accountability that RJ ideally promotes.

Third, the positioning of participants reflects a deeply instrumental logic. Juveniles are constructed primarily as objects to be 'educated and saved' by the state, while their rights and developmental needs are filtered through policy goals of risk prevention, reducing reoffending, and maintaining social stability.¹³² The 'forgiveness' of victims becomes a procedural condition for the state's leniency, while guardians and social organisations are assigned auxiliary roles to cooperate with state authorities in fulfilling correctional tasks.

Stated attempts to achieve a 'safe' and 'effective' (in line with policy goals) 'repair' follow an institutionalised path that is strictly controlled and defined by the state. Although this path can provide procedural guarantees and policy consistency, it is itself the operation of a state-controlled governance model that produces structural inequality through the language of harmony and education.¹³³ What appears as 'restoration' is in fact the institutional form of governance through correction. As a result, in the youth RJ process, the voices of defendants and victims are suppressed, while the state-dominated voice exerts a controlling influence. This is a structural inequality of discourse that reflects how state power in China permeates and controls RJ for juveniles. The unique experiences, emotional needs, and subjectivity of individuals are significantly compressed in the face of the powerful logic of national governance and institutionalised procedures, and their value is instrumentally used to serve the preset national goals. This deeply reflects the specific form of the 'state-led' model in China's social governance in the field of juvenile justice. The state deploys soft, emotive vocabularies — such as 'forgiveness',

¹³¹ *Criminal Procedure Law* (n 82) art 277; *Prevention Law of Juvenile Delinquency* (n 82) arts 1–2, 4; *Community Corrections Law* (n 82) art 1; *Harmonious Society Decision* (n 16).

¹³² See Xue Yang, 'Community Corrections Programs in China: New Forms of Informal Punishments?' (2017) 19(1) *Asian-Pacific Law & Policy Journal* 49.

¹³³ Enshen Li and Mingyue Su, 'From Punishment to Control: Assessing Juvenile Diversion in China' (2020) 45(2) *Law & Social Inquiry* 372. See also Chengchen He, 'Selective Adaptation of the RNR Model in China's Juvenile Criminal Justice System: Balancing Rehabilitation and Risk Management' (2025) 25(2) *Youth Justice* 158.

‘rehabilitation’, and ‘restoration’ — to obscure processes that are, in practice, intimidating and often inflict long-term harm on young people.

IV COMPARATIVE ANALYSIS: DISCURSIVE PARALLELS AND DIVERGENCES

This part applies the macro-micro analytical lens: the macro level examines the governance logics, institutional rationalities, and moral vocabularies through which the state structures youth RJ; the micro level analyses the participation scripts, role allocations, and affective expectations encoded in legal, policy, and administrative materials. Together, these layers reveal how RJ operates not as a neutral problem-solving mechanism, but as a patterned configuration of power, discourse, and state authority. This part concludes by drawing these strands together into the ‘mirror logic of control’.

A *Macro-Level Analysis: Governance, Power, and the State’s Moral Vocabulary*

1 *Settler-Colonial and Party-State Logics of Governance*

On the macro level, youth RJ in Australia and China is not a break with state authority but a reconstituted form of its apparatus. In both instances, RJ has been discursively recognised as a humane alternative to punitive control, yet once institutionalised, it has produced the similarly organised hierarchical relationships that produce state authority. This convergence is analytically significant precisely because Australia and China draw on different legal traditions, cultural repertoires, and institutional arrangements.

Australia’s youth RJ framework works within a settler-colonial system, built upon the law of the colonising power.¹³⁴ Colonialism is not merely historical but structural: Australian RJ operates within a settler legal order founded on Crown sovereignty and reproduced through federal and state institutions.¹³⁵ More precisely, this restorative framework is embedded in a colonial-settler-migrant formation whose legal and welfare architectures remain deeply hierarchical.¹³⁶ These hierarchies — structured through race, class, migration status, and indigeneity — shape the very conditions under which ‘restoration’ can be imagined.¹³⁷ RJ cannot, in such a setting,

¹³⁴ Tauri, ‘Plastic Shamans’ (n 5).

¹³⁵ Ibid; Alfred (n 74). See also Patrick Wolfe, ‘Science, Colonialism and Anthropology: The Logic of a Global Transformation’ in *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassell, 1999) 43, 52. See *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

¹³⁶ See generally Ghassan Hage, *White Nation: Fantasies of White Supremacy in a Multicultural Society* (Pluto Press, 2000).

¹³⁷ Ibid.

displace the dispossession but instead softens it through a therapeutic narrative of reconciliation.¹³⁸

In contrast, China presents a party-state legal order officially framed through socialist rule-of-law discourse, in which legality is closely tied to political mandates of stability, harmony, and corrective governance.¹³⁹ Here, restorative elements are situated within the governance discourse of ‘harmonious society’, through which conflict resolution is recast as a moral performance of collective unity.¹⁴⁰ Both forms, despite their divergent genealogies — settler-colonial liberal legality in Australia and party-state legality in China — are based on the use of RJ as a moral governance that reasserts normative authority: a manner through which normative authority is reaffirmed under the moralised vocabulary of care, harmony, and repair.¹⁴¹

Thus, in the name of ‘protection’ in Australia or ‘harmony’ in China, RJ operates as a moralised technology of governance through which the state turns coercion into a performance of care. The settler-colonial state disciplines through the symbolic inclusion of Indigenous communities and the protective vocabulary of youth welfare; the Chinese party-state disciplines by blurring the boundary between moral cultivation and political order under the vocabulary of harmony. These discourses, in the case of Australia and China, legitimise intervention while at the same time covering over asymmetrical relations that derive from them.¹⁴² This common logic — governance disguised through the language of restoration — forms the first axis of convergence between the two jurisdictions.¹⁴³

¹³⁸ Kathleen Daly, ‘Restorative Justice: The Real Story’ (2002) 4(1) *Punishment & Society* 55, 64; Little, Stewart and Ryan (n 6).

¹³⁹ Ding Xiaodong, ‘Law According to the Chinese Communist Party: Constitutionalism and Socialist Rule of Law’ (2017) 43(3) *Modern China* 322, 330–1. See also Xudong Zhang, ‘Introduction: The Cultural Politics of Postsocialism’ in *Postsocialism and Cultural Politics: China in the Last Decade of the Twentieth Century* (Duke University Press, 2008) 1, 4, 8, 12.

¹⁴⁰ Flora Sapio et al, ‘The Expression of Justice in China’ in *Justice: The China Experience* (Cambridge University Press, 2017) 3, 8–9, 10–12, 22; Yuan (n 18); Zhang and Xia (n 16).

¹⁴¹ Tauri, ‘Plastic Shamans’ (n 5); 杨松源 [Yang Songyuan], 《德法合治的法律传统与当代启示》 [The Legal Tradition of the Combination of Morality and Law and Its Contemporary Enlightenment] (2024) 2(7) *社会与经济 Society and Economy* 59. See also Yuan-Kang Wang, *Harmony and War: Confucian Culture and Chinese Power Politics* (Columbia University Press, 2011).

¹⁴² See Pierre Bourdieu, ‘Structures, Habitus, Power: Basis for a Theory of Symbolic Power’ in *Outline of a Theory of Practice*, tr Richard Nice (Cambridge University Press, 1977) 159, 164–5, 168–9, 188. See also Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge University Press, 1999).

¹⁴³ See John Pratt, ‘Penal Populism and Crime Control’ in *Penal Populism* (Taylor and Francis, 2007) 94.

2 Moral-Ethical Vocabularies and the Aestheticisation of Control

The vocabulary of RJ is the vocabulary of emotion, such as ‘healing’, ‘forgiveness’, ‘reintegration’, and ‘community’. But, as the comparisons across the two nations indicate, these are not neutral signifiers, but moral technologies that aestheticise power. In Australia, the language of ‘healing’ and ‘community’ is shaped by a settler-colonial politics of reconciliation: it allows the state to appear reparative without relinquishing sovereignty.¹⁴⁴ RJ functions here in part as an emotional proxy for political reform: it generates the sensation of progress, rather than its substance.¹⁴⁵ The state’s emotional investment in reconciliation subsumes the structural questions of land, reparation, and sovereignty under the individualised drama of apology and forgiveness.¹⁴⁶ The ‘softness’ of this vocabulary performs a legitimating and affective function, managing public emotion and rendering the colonial order institutionally acceptable through the language of empathy.¹⁴⁷

In China, a parallel moral discourse is mobilised through the vocabulary of harmony, which folds education and correction into a moralised vision of political order. The state’s paternal role as educator and moral guardian frames RJ as part of a broader project of social tutelage. The youth is constructed as a moral pupil to be educated and corrected, while coercive intervention is recoded as a gift of the state.¹⁴⁸ ‘Harmony’ functions as a moral vocabulary comparable to ‘protection’: both translate coercive intervention into moral pedagogy.

In both instances, moral language operates not through direct coercion but through persuasion, emotion, and moral suasion. The outcome is convergence of governance forms: they both use restorative discourse to assert legitimacy. This shared logic shows the elasticity of RJ as a transnational technology of moral governance — embedded in any ideological order because its language of ‘care’ is politically non-threatening.

¹⁴⁴ Aileen Moreton-Robinson, ‘Writing off Sovereignty: The Discourse of Security and Patriarchal White Sovereignty’ in *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press, 2015) 137, 150–1; Tauri, ‘Plastic Shamans’ (n 5). See also *Royal Commission into Aboriginal Deaths in Custody: National Report* (Report, 15 April 1991) (‘*Aboriginal Deaths Report*’).

¹⁴⁵ Sara Ahmed, ‘Commitment as a Non-performative’ in *On Being Included: Racism and Diversity in Institutional Life* (Duke University Press, 2012) 113, 115–17, 124–7.

¹⁴⁶ Lorenzo Veracini, ‘Sovereignty’ in *Settler Colonialism: A Theoretical Overview* (Palgrave Macmillan, 2010) 53, 64–5.

¹⁴⁷ See generally Sara Ahmed, ‘In the Name of Love’ in *The Cultural Politics of Emotion* (Edinburgh University Press, 2nd ed, 2014) 122, 122–3. See also Elspeth Probyn, ‘Shame, Bodies, Places’ in *Blush: Faces of Shame* (University of Minnesota Press, 2005) 37, 46.

¹⁴⁸ *Community Corrections Law* (n 82) arts 1, 3, 36, 42, 52; *Core Socialist Values* (n 16); *Harmonious Society Decision* (n 16).

3 Institutionalisation, Bureaucratic Management, and Emotional Governance

Rather than merely formalising RJ, institutionalisation absorbs restorative practices into bureaucratic structures, turning the language of repair into an administratively managed process of compliance. In both instances, RJ has been integrated into the state's machinery and utilises moral language to achieve measurable results and establish procedural boundaries. This is evident in Australia by laws such as the *Young Offenders Act 1997* (NSW), in which the concept of 'restoration' is legalised in a tiered process of warnings, cautions, and conferences, each with defined time limits and requirements for documentation.¹⁴⁹ Voluntariness — supposedly a cornerstone of RJ — becomes a procedural tick-box. 'Reconciliation' is a code word for bureaucratic closure. The administrative efficiency of RJ, rather than its relational authenticity, becomes its justification.¹⁵⁰

In China, youth RJ has been inscribed into the judicial and prosecutorial system and is governed by the rules of the Supreme People's Court and Procuratorate.¹⁵¹ Mediation outcomes are reported as performance indicators in the national stability apparatus.¹⁵² The bureaucratisation of moral discourse turns 'dialogue' into a state-managed ritual where success is measured by compliance and speed of resolution, rather than empowerment or transformation. Emotional governance — training participants to be calm, repentant, and grateful — narrows the participatory promise of RJ into a state-managed process of affective regulation.

¹⁴⁹ *Young Offenders Act 1997* (n 25) ss 10, 19(b)–(c), 36(b)–(c), 40(1)(b)–(c), 43, 48–49, 52, 56–58, 64.

¹⁵⁰ See Thom Brooks, 'Punitive Restoration and Restorative Justice' (2017) 36(2) *Criminal Justice Ethics* 122, 125.

¹⁵¹ *Criminal Procedure Law* (n 82) arts 288–90; 《人民检察院刑事诉讼规则》 [Rules of Criminal Procedure for the People's Procuratorates] (People's Republic of China) Supreme People's Procuratorate, 30 December 2019, arts 492–501 ('*Procuratorates Criminal Procedure Rules*'); 《最高人民法院关于适用“中华人民共和国刑事诉讼法”的解释》 [Interpretation by the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China] (People's Republic of China) Supreme People's Court, Fa Shi [2021] No 1, 26 January 2021, arts 587–96 ('*Supreme Court Interpretation on Criminal Procedure Law*').

¹⁵² For example, the *Opinions on Maximising the Basic Role of People's Mediation in Promoting Litigation Source Governance* explicitly requires that 'people's mediation work shall have an increased weight in the Ping'an Construction assessment', thereby incorporating mediation outcomes into the performance assessment framework of China's stability governance system. It further mandates that mediation results be 'reported back to the People's Courts' and links mediation performance to funding and rank evaluation for mediators. These provisions demonstrate that mediation outputs are systematically quantified, reported, and used as performance indicators within the national stability apparatus: 《关于充分发挥人民调解基础性作用 推进诉源治理的意见》 [Opinions on Maximising the Basic Role of People's Mediation in Promoting Litigation Source Governance] (People's Republic of China) Supreme People's Court and the Ministry of Justice, Si Fa [2023] No 1, 27 September 2023.

RJ thus functions, across different legal-political systems, as a technology of affective governance that translates care into control. Feelings are being laundered; empathy is being mechanised and subject to official guidance. It is no longer a conversation but a display of legitimacy. This, then, is the paradox of the macro: under the language of decentralisation, the state mobilises RJ to extend administrative control; under the language of care and emotion, it transforms feelings into an object of institutional management.

B *Micro-Level Analysis: Prescribed Scripts and Discursive Roles*

1 *Scripts, Facilitation, and the Regulation of Speech*

At the micro level, in both jurisdictions, RJ is organised communication around pre-scripted dialogue. Australian youth justice conference facilitators are trained to follow a sequence of scripted speech.¹⁵³ RJ processes also have different phases, for example, the NSW Restorative Justice Conference has four phases: meeting, preparation, communication, and planning.¹⁵⁴ This may be participatory, but it is so at the expense of enforcing a discursive order such that some voices are privileged over others — the facilitator's and the institution's at the expense of the young person's — and that young person's speech is confined to a confessional mode; the victim's voice channels forgiveness. The exchange as a whole takes place within a state-managed dialogic space, where participants are expected to perform remorse, calmness, and acceptance, while departures from this emotional script are subtly corrected or marginalised.

In China, youth RJ is more explicitly structured by procedural requirements, institutional review, and state-defined correctional goals. Mediation procedures are conducted by state officials who serve as the moral arbiters, leading both parties to a mutually acceptable solution befitting 'social harmony'.¹⁵⁵ Dialogue becomes increasingly monologic: rather than enabling open-ended exchange, the process channels participants toward state-defined expressions of repentance, forgiveness, and correction. Voluntariness is a formality; agreement is reached when the participants assume the appropriate emotional demeanour of repentance and understanding.¹⁵⁶ Here, the institutional design of facilitation frames dialogue less

¹⁵³ See *Youth Justice Conferencing Manual* (n 19). See also Youth Justice NSW, *Convenor Management Manual: Policy and Procedure* (Manual, 2024) 5, 22, 26, 28.

¹⁵⁴ See the part titled 'How does a Restorative Justice process work?' on the NSW Restorative Justice Web Page (n 19).

¹⁵⁵ *Procuratorates Criminal Procedure Rules* (n 151) arts 492, 495–498.

¹⁵⁶ See *Supreme Court Interpretation on Criminal Procedure Law* (n 151) arts 590–592; *Criminal Procedure Law* (n 82) arts 289–290.

as open-ended participation than as a ritualised performance of responsibility and compliance.

Who speaks, how, and with what legitimacy is pre-determined by institutional design. Speech is not a space for agency but an instrument for moral alignment. The apparent dialogue of RJ is, in practice, a managed performance of consent. At the micro level, the regulation of emotion within restorative encounters reflects broader state-defined vocabularies: harmony and correction in China, and protection and rehabilitation in Australia. In both contexts, control is embedded not only in legal outcomes but in the communicative structure of the process itself.

2 *Empathy, Emotion, and Affective Management*

Emotion becomes a central medium through which state power is translated into micro-level forms of participation, repentance, and repair, making control appear as care, responsibility, and reconciliation. The moral authority of the state is not asserted through coercion but through affective conditioning. The legal and policy framework positions remorse, empathy, and forgiveness as desirable indicators of successful participation, thereby narrowing the range of legitimate emotional expression. In Australia, youth justice conferencing is framed through an affective sequence of responsibility, harm recognition, dialogue, and repair, with procedural closure achieved through an agreed outcome plan.¹⁵⁷ This does not prove how every conference unfolds in practice, but it shows how the official framework makes certain emotional performances more institutionally legible than others. The young person is positioned as a responsible and remorseful subject, while the victim's participation is channelled toward repair, closure, and procedural resolution. These emotions are not only expressions of spontaneous feeling, but they are staged performances that affirm the legitimacy of the state's narrative of redemption. Thus, the process turns individual feeling into a bureaucratic artefact: a signed agreement, a recorded apology, a closure report.

In China, the emotional register is differently inflected. The rhetoric of 'education' represents emotion as a marker of moral progress: the remorseful tears that the young person sheds or the victim's nod of forgiveness are signs that state morality has been internalised.¹⁵⁸ Unlike the Australian model, the Chinese framework filters emotion through institutional review, conditional leniency, and correctional

¹⁵⁷ *Youth Justice Conferencing Manual* (n 19); *Young Offenders Act 1997* (n 25) s 3(c), 52, 56-8; 'Youth Justice Conferences', *NSW Government* (Web Page) <www.nsw.gov.au>.

¹⁵⁸ See Shanhe Jiang et al, 'Community Corrections in China: Development and Challenges' (2014) 94(1) *Prison Journal* 75, 81-2, 90.

supervision.¹⁵⁹ Remorse and forgiveness become less expressions of relational repair than indicators that the young person has accepted the state-defined path of correction. The affective trajectory is therefore organised around a linear and didactic movement from error to repentance and then to harmony, so that emotion becomes both the means through which correction is communicated and the evidence that the young person has accepted the state-defined path of reform. Participants are not simply invited to express their feelings but are guided toward institutionally recognisable forms of remorse, gratitude, and acceptance.

When we consider how emotional expression varies in different contexts, both systems provide evidence of moral rehabilitation. And in both cases, the performative act of affect replaces structural change. Empathy becomes a form of control, not freedom. The restorative encounter shows us how modern states do not merely govern bodies but feelings: emotional sincerity is transubstantiated into administrative capital.¹⁶⁰

3 Agency, Compliance, and the Aesthetic of Participation

One of the most striking similarities is how both systems aestheticise participation. Although RJ is theoretically grounded in voluntary participation and mutual respect, its institutional design often transforms participation into a condition of compliance.¹⁶¹ In Australia, the process of gaining access to conferencing requires an admission and can only begin once the young person has accepted culpability.¹⁶² The young person's 'choice' to be a participant is therefore conditioned upon the threat of being arrested and charged by police. The appearance of agency in adopting RJ veils the underlying reasons for compliance with the punitive system. The same is true for victims, whose participation may be framed as civic virtue but whose consent can be instrumentalised to legitimise leniency or administrative closure.

¹⁵⁹ *Criminal Procedure Law* (n 82) arts 282–4, 288–90; *Community Corrections Law Implementation Measures* (n 123) arts 9, 23–4, 32. See also 对涉罪未成年人适用附条件不起诉 — 找准办案、帮教与转化的平衡点' [Applying Conditional Non-Prosecution to Minors Suspected of Crimes: Identifying the Balance between Case Handling, Assistance and Transformation], 中华人民共和国最高人民检察院 [(People's Republic of China) Supreme People's Procuratorate] (Web Page, 26 June 2021) <www.spp.gov.cn>.

¹⁶⁰ See Christian Sorace, 'The Chinese Communist Party's Nervous System: Affective Governance from Mao to Xi' (2021) 248 *China Quarterly* 29. See also Yijing Tong, Chih-Wei Hsieh and Jincheng Fan, 'Emotional Governance at the Street Level: A Content Analysis of Service Slogans in China' (2024) 4(2) *Global Public Policy and Governance* 134; Michael Howcroft, Nicky Marsh and Joseph Owen, 'Levelling Up, Affective Governance and Tensions within "Pride in Place"' (2025) 43(2) *Environment and Planning C: Politics and Space* 387.

¹⁶¹ Marian Liebmann, 'Issues in Restorative Justice' in *Restorative Justice: How It Works* (Jessica Kingsley Publishers, 2007) 319, 323–6.

¹⁶² *Young Offenders Act 1997* (n 25) ss 10, 19(b)–(c), 25(1), 36(b)–(c), 40(1)(b)–(c), 44(1), 64(1)(b).

In China, the illusion of agency is produced through the state's presentation of reconciliation and mediation as cooperative, consensus-based processes. The mediation is presented as a cooperative act of moral restoration, but in fact, it takes place in an exclusive order in which the moral authority is the state.¹⁶³ The repentance of the youth and the forgiveness of the victim are two roles that are preordained. Disobeying the morality play — not forgiving, reacting emotionally, doubting the fairness — makes the involved parties 'unharmonious'.¹⁶⁴ In this way, 'agency' is not exercised but performed as compliance, tolerated only insofar as it reinforces the state's moral order rather than contests it.

In both cases, RJ's purported participatory nature can obscure the coercive force of state authority, making structured compliance appear as voluntary dialogue and repair. The legally structured conference or mediation process becomes an institutional form through which dialogue is rendered legible as compliance. The conference table or mediation room, therefore, becomes an aesthetic space of consensus in which the appearance of dialogue substitutes for real justice. And where this process offers nothing from the inside out but performative inclusion: participation is not empowering but enacted so that participants are seen, heard, and managed. The aesthetic of engagement — soft, empathetic, orderly — is the micro-logical expression of a macro-logic of control.

C *Synthesis: The Mirror Logic of Control*

Macro and micro mirror with a strong symmetry.¹⁶⁵ Despite profound differences in legal tradition, political structure, and cultural context, Australia and China both convert RJ's restorative vocabulary into state-centred governance. Australia does so through protection and care shaped by settler-colonial and welfare-administrative logics; China through harmony, education, and correction articulated within state-centred legal and policy discourse. In both contexts, restoration becomes a language through which state power is organised and legitimated.

At the macro level, the moral vocabularies of 'protection' and 'harmony' operate as affective technologies of governance, recasting coercion as care and control as compassion.¹⁶⁶ At the micro level, these vocabularies are translated within legal and

¹⁶³ *Procuratorates Criminal Procedure Rules* (n 151) arts 496–8. *Supreme Court Interpretation on Criminal Procedure Law* (n 151) arts 592–6.

¹⁶⁴ See *Core Socialist Values* (n 16); *Harmonious Society Decision* (n 16); *Criminal Procedure Law* (n 82) arts 288–90; *Procuratorates Criminal Procedure Rules* (n 151) arts 492, 497–8.

¹⁶⁵ It is important to note that the 'mirror image' relationship identified here does not arise organically from the two systems; rather, it emerges as a methodological outcome of holding the jurisdictions against one another through the comparative micro-macro framework.

¹⁶⁶ See generally Joseph S Nye, *Soft Power: The Means to Success in World Politics* (PublicAffairs, 2004).

policy materials into procedural scripts, role allocations, and affective expectations, producing an official image of participation as orderly, dialogic, and consensual. Australia and China both construct authority through managed, pedagogical, and affective forms of communication. The RJ encounter thus becomes a site where power speaks softly but firmly — through feelings of empathy, pedagogy, and actions.

The structural similarity lies not in the moral content of these vocabularies but in their governmental function: affect is mobilised as a means of rule, while moral discourse provides the vehicle through which coercion is translated into care, responsibility, and repair.¹⁶⁷ In both, the state appropriates restorative language as an act of reconstitution with which to reauthorise itself during moral crises.¹⁶⁸ While the colonial state governs through the language of reconciliation and the authoritarian state through the pursuit of stability, both rely on kinds of semiotic registers of affective governance: empathy in one, harmony in the other. But these registers all converge toward the same effects: the pacifying of dissent, the reproduction of obedience.

This mirror logic reveals the limits of imagining RJ as an emancipatory practice once it is absorbed into state legal and bureaucratic frameworks. In such contexts, RJ may become one of the most sophisticated contemporary technologies of state power: an affective mode of governance that fuses moral vocabulary with bureaucratic reason. Its emancipatory promise is neither wholly false nor fully realised: RJ can produce moments of voice, recognition, and emotional encounter, but under state-led institutionalisation, those moments exist within structures designed to capture them and convert them into administratively legible forms of responsibility, remorse, and repair.

This comparative scrutiny argues that youth RJ in Australia and China works as a dual discourse: it speaks the voice of care whilst enacting the role of control. The state's emotional lexicon recasts RJ as a moral drama, legitimating a broader regime

¹⁶⁷ See generally Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge University Press, 1999).

¹⁶⁸ RJ probably emerged from a period of moral crisis in Australia. By the 1990s, the carceral consequences of minor public order offences carrying custodial penalties under the *Summary Offences Act 1988* (NSW) were becoming increasingly visible, against the background of a marked rise in Australian prison populations: see *Summary Offences Act 1988* (NSW) s 4, as substituted by *Summary Offences (Amendment) Act 1993* (NSW) s 3; Carlos Carcach and Anna Grant, 'Imprisonment in Australia: Trends in Prison Populations and Imprisonment Rates 1982–1998' (Trends & Issues in Crime and Criminal Justice No 130, Australian Institute of Criminology, October 1999). At the same time, the *Aboriginal Deaths Report* made visible the fact that Aboriginal deaths in custody are driven by police deliberately targeting and criminalising Aboriginal people — from a very young age: see *Aboriginal Deaths Report* (n 144).

of affective governance through the language of care, responsibility, and repair. The recurrence of these patterns across divergent political orders reveals the adaptability of state power in RJ: restoration becomes a language through which authority is moralised, affectively managed, and institutionally produced.

In this respect, RJ's transformative promise is reworked through state power: empathy becomes a resource of compliance, dialogue becomes a managed procedure, and healing becomes a moral language through which authority is reaffirmed. The moral lexicon differs, the institutional apparatus changes, but the power structure remains. This is the logic of state-led RJ: an efficient and sometimes ruthless mode of governance concealed beneath the gentle face of care, dialogue, and repair. Once a process of institutionalisation emerges, RJ faces a risk: that it will be reduced to a mechanism for coordinating participation, documenting compliance, and generating institutionally recognisable outcomes.¹⁶⁹ RJ becomes a component of the state's administrative machinery, transforming moral rhetoric into measurable outcomes and procedural benchmarks.

V CONCLUSION: TOWARD A MORE TRANSFORMATIVE RESTORATIVE JUSTICE

If RJ is to recover its transformative potential, the task is to prevent its relational promise from being captured by compliance-based diversion, bureaucratic closure, and state-defined measures of success. This does not require the state to disappear altogether; rather, it requires a redistribution of authority. The state may remain responsible for funding, rights protection, and victim safety, but it should not monopolise the definitions of harm, responsibility, repair, and success.

Comparative examples such as Hollow Water's Community Holistic Circle Healing in Canada and Indigenous community-based justice programmes supported under Canada's Aboriginal Justice Strategy suggest that restorative practices become more transformative when communities exercise authority over accountability, healing, and reintegration, rather than merely providing cultural legitimacy to state processes.¹⁷⁰ Te Pae Oranga in Aotearoa New Zealand similarly illustrates a hybrid model in which iwi and other Māori partners and community panels address offending through tikanga, kaupapa Māori, and restorative practices, while still

¹⁶⁹ See William R Wood and Masahiro Suzuki, 'Getting to Accountability in Restorative Justice' (2024) 19(7) *Victims & Offenders* 1400, 1403–6.

¹⁷⁰ 'About', *Community Holistic Circle Healing* (Web Page) <www.communityholisticcirclehealing.ca>; 'Compendium of Promising Practices to Reduce Violence and Increase Safety of Aboriginal Women in Canada – Compendium Annex: Detailed Practice Descriptions', *Department of Justice Canada* (Web Page, 2 December 2021) <<https://justice.gc.ca>>; Department of Justice Canada, *Evaluation of the Aboriginal Justice Strategy* (Report, December 2016).

revealing the limits of state referral and compliance-based completion.¹⁷¹ These examples do not provide a simple template for Australia or China, but they show that the crucial issue is not whether RJ occurs inside or outside the state, but who has authority to define harm, safety, repair, and success.¹⁷²

In Australia, the question is whether youth RJ can move beyond police-led diversion, administrative outcome plans, and symbolic Indigenous inclusion toward practices that redistribute authority to Aboriginal and Torres Strait Islander communities, victims, young people, and families. In NSW, this is visible in the procedural management of conferencing through admission, referral, and outcome-plan compliance; in the NT, the same logic appears in a more concentrated frontier form, as the incorporation of 'community' and 'culture' into a settler-colonial penal-welfare framework. A more transformative model would therefore require not merely culturally sensitive participation but a deeper shift in authority: from state-managed inclusion to community-defined processes of accountability, safety, healing, and reintegration.

In China, the equivalent question is whether youth RJ can move beyond state-led correctional governance toward more autonomous forms of social support. Juvenile prosecutorial social support systems, judicial social work, social investigation, appropriate-adult services, victim protection, and conditional non-prosecution assistance show that repair need not be confined to punishment, compensation or repentance.¹⁷³ Their transformative potential, however, depends on whether social workers, families, victims, and young people can shape support and reintegration themselves, rather than merely fulfil state-defined goals of education, correction, and rescue.

¹⁷¹ 'Te Pae Oranga Iwi Community Panels', *New Zealand Police* (Web Page) <www.police.govt.nz>.

¹⁷² William R Wood and Juan Tauri, 'Restorative Justice on Stolen Ground: Dispossession, Entrenchment, and Eurocentric Justice in Australia and New Zealand' (2026) 36(3) *International Criminal Justice Review* 315.

¹⁷³ '未成年人检察社会支持体系建设典型案例 [Typical Cases of Demonstration Construction of the Social Support System for Procuratorial Work Involving Minors]', 中华人民共和国最高人民检察院 [(People's Republic of China) Supreme People's Procuratorate] (Web Page, 14 April 2023) <www.spp.gov.cn>; '最高检发布第二十七批指导性案例规范办理涉罪未成年人附条件不起诉案件 [The Supreme People's Procuratorate Releases the 27th Batch of Guiding Cases to Standardise the Handling of Conditional Non-Prosecution Cases Involving Minors Suspected of Crimes]', 中华人民共和国最高人民检察院 [(People's Republic of China) Supreme People's Procuratorate] (Web Page, 3 March 2021) <www.spp.gov.cn>.

The advantage of redistributing authority is that families and communities would no longer function merely as auxiliary supervisors or cultural witnesses but as participants with authority to identify trauma, material need, relational harm, and appropriate forms of support. At the same time, the risk in both jurisdictions is that the state may outsource the labour of restoration while retaining control over funding, eligibility, evaluation, and success.¹⁷⁴ Transformative RJ must therefore be community-governed or socially supported but not safeguard-free: young people require independent legal advice; victims require independent support and options for indirect or representative participation; serious power imbalances must be screened; and refusal to participate should not trigger punitive escalation. A more transformative RJ therefore depends not on the state's capacity to administer remorse, closure, or compliance but on its willingness to redistribute authority over harm, safety, repair and success to those most affected by them.

¹⁷⁴ See generally Jude Howell, Regina Enjuto Martinez and Yuanyuan Qu, 'Technologies of Authoritarian Statecraft in Welfare Provision: Contracting Services to Social Organizations' (2021) 52(6) *Development and Change* 1418.