

Exploration on the Operation Path of the Specialization and Institutionalization of Juvenile Courts

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Abstract: The development of juvenile courts has experienced nearly 40 years of challenges, transformations, and restructuring, at times encountering developmental bottlenecks. This article conducts a comparative analysis of several operational models of juvenile courts currently under focus in judicial practice and theoretical discussions. It examines the prospects of juvenile court development from the perspectives of specialization and institutionalization and explores the integration model of juvenile and family court proceedings along with its specific construction path. Based on these considerations, the article proposes suggestions for the institutionalization of juvenile court operations, including organizational structure, case jurisdiction, and social support systems.

1. Introduction

At the level of judicial organs in China, the judicial organs have played an active role as the forerunner of the judicial reform of minors in China. In November 1984, the People's Court of Changning District of Shanghai City established the first juvenile court in New China. In the following forty years, the juvenile court has gone through five stages: initial establishment, low tide, turning point, deepening and re-starting. It once fell into the bottleneck of development and is still exploring in the wave of reform. Procuratorial organs came from behind and developed prominently. In 2015, the Supreme People's Procuratorate established the Office for Procuratorial Work for Minors, and in 2019, a special procuratorial office for minors was established. By 2022, 2207 procuratorates across the country had set up procuratorial organs for minors, actively acting to form a pattern of judicial protection for minors in the "four major procuratorates". In contrast, the people's court, as a juvenile judicial organ, has insufficient stamina, especially in the professional and substantive operation of the organization. Therefore, this article focuses on the specialization of the judicial organs and their operation of the substantive point of view to elaborate the juvenile justice system of the organization of the rules of construction.

2. The Real Challenges and Development Bottlenecks of Juvenile Courts

2.1. Bumpy Construction and Awkward Position of Juvenile Courts, Restricting the Professional Development

Over the past three decades, the development of juvenile courts, especially after critical milestones such as the clearance of specialized courts in 1999, the merging of internal institutions during the 2015 judicial reform, and the family court reform in 2016, has faced significant challenges and setbacks. Some scholars have even argued that juvenile courts have stagnated or regressed. The number of juvenile court institutions has steadily declined. By the end of 1994, there were 3,300 juvenile courts in the entire country. However, by 2004, this number had decreased to 2,400, and further reduced to 2,181 in 2022. Throughout its development, juvenile courts have mainly followed a "bottom-up" model, resulting in diverse juvenile court models tailored to the specific needs of individual courts based on their case profiles and actual requirements for the protection of minors. These models include panel models, juvenile criminal trial chamber models, and independent comprehensive trial chamber models. However, following the internal institution reform and family court reform, independent comprehensive juvenile trial chambers have significantly diminished. Most juvenile courts are now attached to criminal, civil, administrative, or other types of courts, and in some cases, even environmental courts, which has led to an awkward status.

In the field of justice, there exists an "institutional effect", wherein the establishment of new trial institutions significantly amplifies the demand for justice [1]. The creation of a separate department for juvenile prosecution within the procuratorate system is a testament to the existence of this "institutional effect". Establishing dedicated institutions can effectively drive case numbers, business development, and professionalization. Conversely, the merging of institutions can affect personnel allocation, resource investment, and institutional development, hindering innovation in the related field, such as the professionalization of juvenile judges. Currently, although juvenile courts have achieved nationwide coverage, many suffer from weaknesses in terms of staffing and organizational structure. In juvenile courts attached to other court types, their work is inevitably influenced by the functions of the parent court. Some juvenile courts exist in name only, with their organizations effectively dormant. In some places, the institutions do not match their designated functions, leading to disarray and inconsistency. Although some places have both the name and substance of juvenile courts, they still exhibit inconsistencies in the operational mechanisms between or within departments and a lack of unified judicial work philosophies. At the provincial three-tier court level, a unified, efficient guidance system and a seamless trial system between superior and inferior courts have not been established for juvenile courts. The varying approaches to establishing juvenile courts have resulted in inconsistent jurisdiction, differing judicial philosophies, interdepartmental conflicts of interest, and inefficient institutional operations. These disparities create obstacles in policy implementation. Additionally, regional disparities have contributed to uneven development. Some independently structured juvenile courts have accumulated extensive experience over the years, forming a mature working system, while others have started nearly from scratch, creating significant disparities. The negative "institutional effect" described above has become the most crucial factor hindering the future development of juvenile courts.

2.2. Struggling for Survival in the Midst of Reforms, Uncertain Prospects of Integration with Family Court Development

The family is the fundamental unit of society, and the reforms in family court proceedings initiated since 2016 hold significant importance in promoting family stability, harmony, and overall

societal progress. Given the overlapping goals, similar ideologies, intersecting subjects, interrelated functions, and shared institutional aspects to some extent between juvenile courts and family court proceedings, various viewpoints and practices have emerged regarding the relationship between the two, including integration, absorption, and parallel development approaches.

At the onset of family court reforms, the senior leadership of the Supreme People's Court recognized the issue of the relationship between juvenile courts and family court proceedings. In its 2021 "Opinions on Strengthening the Adjudication of Cases Involving Minors in the New Era", the Supreme People's Court called for "vigorously promoting the integrated development of adjudication involving minors and family court proceedings... The adjudication involving minors and family court proceedings should mutually promote and coordinate their development on the basis of their relative independence".

Determining how to promote mutual cooperation, integration, and development on a relatively independent basis poses a significant theoretical and practical challenge. While adjudication involving minors and family court proceedings are highly interconnected, they also have distinct development goals, adhere to different adjudication norms, and exhibit unique judicial characteristics. Mr. Zhou Jiahai, Deputy Director of the Research Office of the Supreme People's Court at the time, highlighted three key differences between juvenile courts and family courts: juvenile adjudication focuses on children, while family court proceedings concentrate on the maintenance of family relationships and the redistribution of family interests; juvenile adjudication primarily falls within the public law domain, while family court proceedings belong to the private law domain; the core of juvenile adjudication lies in juvenile delinquency issues, while civil and administrative matters involving minors are its moderate extensions. Family court proceedings cannot fully encompass juvenile adjudication. Based on this, he proposed the idea of "pursuing separate yet distinct paths reasonably allocating their respective areas of jurisdiction under the scenario of pilot testing".

From the perspective of the Supreme People's Court's top-level design, it is evident that by adopting the "three-in-one" consolidation approach for juvenile courts, it incorporated certain family court cases into juvenile court adjudication, thereby resolving the nature and scope positioning of the two judicial functions through institutional arrangements. This expansion of the jurisdiction of juvenile courts addresses the long-standing issue of juvenile courts being underutilized. However, this arrangement essentially fragments family court proceedings: family cases involving underage children are brought under the jurisdiction of juvenile courts, while family cases not involving underage children are adjudicated by family or civil courts. These cases are handled by different judicial personnel, who follow distinct judicial philosophies, adjudication models, and work mechanisms. The rationale behind this arrangement warrants further scrutiny.

In practice, there are three primary models for the integrated development of juvenile courts within the national court system.

(1) Independent "Criminal + Family + Administrative" Juvenile Family Court or Comprehensive Juvenile Court: These institutions have established themselves successfully in the early stages of juvenile adjudication work, maintain a certain level of recognition both within and outside the court system, and have remained independent even after the 2018 reform of court internal structures. In this model, criminal, family, and administrative teams are established beneath the juvenile court. The challenge with this approach is that family court proceedings may overshadow criminal adjudication, with divorce disputes becoming the primary focus of the juvenile court. This shift in priorities may lead to a diminished emphasis on traditional juvenile court activities such as extrajudicial interventions and legal education, hampering the specialized development of juvenile adjudication.

(2) Independent "Criminal + Family" Juvenile Family Court or Comprehensive Juvenile Court:

Under this model, criminal and family teams are established within the juvenile court, adopting a dual-specialty adjudication approach of "criminal court + family court." During the handling of criminal cases involving minors, the court follows a policy of "education, rehabilitation, and rescue", emphasizing "education as the primary goal, punishment as a secondary measure", and a juvenile justice philosophy that promotes leniency. In handling family cases, a flexible judicial approach is taken, utilizing family investigations, joint mediation, cooling-off periods in marriages, and other measures to facilitate the resolution of cases. The primary issue with this model lies in the lack of integration of ideologies; it still upholds two parallel philosophies, albeit combining them within a single framework.

(3) "Merged Model" Affiliated with Courtrooms (including Civil and Criminal Courtrooms) or People's Courts: In this approach, criminal teams are based in criminal courtrooms, and family teams are based in civil courtrooms, with minimal interaction between them. This model does not adhere to the requirement of "three-in-one" consolidated adjudication. It poses challenges to the unified guidance of juvenile adjudication, and the lack of integration reflects institutional resistance. "Three-in-one" adjudication involves concentrating three distinct litigation types with markedly different procedural norms, legal principles, and value orientations within a single judicial institution, demanding a high level of comprehensive expertise from the judicial personnel. Consequently, some courts have avoided pursuing consolidated adjudication. The reasons for this phenomenon include the internal restructuring of people's courts carried out by the Supreme People's Court since 2018, which led to the consolidation of numerous courtrooms within the court system. Additionally, at the local level, certain judicial functions with a long history and significant social visibility and impact still necessitate the existence of courtrooms as a means of continuity. Consequently, many local people's courts have opted to retain courtrooms but not as independent entities; rather, they are affiliated or attached to other court structures.

In summary, the diversified organizational structures of juvenile adjudication institutions across various regions have resulted in a lack of specialization and unified oversight, hindering the optimal utilization of juvenile adjudication functions. This, in turn, diminishes the judicial and societal outcomes of juvenile adjudication. Therefore, as part of advancing the specialization of juvenile adjudication institutions, this specialization should encompass not only formal institutional structures but also the substantive operation of these institutions, their management mechanisms, and internal consistency within the hierarchical court system.

2.3. Lack of a Sound and Rule-Based Work Mechanism, Insufficient Management of Juvenile Adjudication

(1) Inadequate Evaluation System: The current evaluation system for juvenile courts is not tailored to the unique nature of juvenile adjudication. While juvenile courts handle a relatively small number of criminal cases, the work involved is highly specialized and includes non-adjudicative tasks such as social investigations, social guardianship, psychological counseling, follow-up assistance, care and placement, and legal education. These efforts are crucial for the education, rehabilitation, and reintegration of juvenile offenders into society and require significant human and material resources. In some cases, the rehabilitation process may span several years or even longer. However, the evaluation of juvenile adjudication is not significantly different from evaluations in other areas of adjudication and still primarily relies on case quantity. The additional workload of juvenile court judges, which involves extensive non-adjudicative activities, often goes unrecognized in their performance evaluations, relying solely on the personal enthusiasm or commitment of judges. Juvenile court judges face disadvantages in terms of their appointment and evaluation compared to other judges. Furthermore, to make up for the low case volume in juvenile

court, judges may need to handle other civil and commercial cases, diverting their attention away from the specialized work of the juvenile court and weakening its distinctive functions. This overreliance on case quantity-based evaluation mechanisms undermines the motivation of judicial personnel and hinders the development of juvenile courts.

(2) Unclear Selection Criteria: Juvenile courts lack a specialized and scientific evaluation and appointment system for judges handling cases involving minors. Juvenile justice is a specialized field that requires professionally trained judicial personnel. The newly revised Laws on the Protection of Minors and the Prevention of Juvenile Delinquency emphasize the need for "specialized institutions or designated personnel" and specify that these personnel should be "specially trained and familiar with the physical and mental characteristics of minors". The Supreme People's Court also requires juvenile court judges to be "knowledgeable about the characteristics of minors and skilled in conducting youth education". However, these regulations are relatively general and do not establish uniform standards or qualifications for juvenile court judges.

2.4. Inadequate Utilization of the "Two-Pronged Approach", Insufficient Collaborative Efforts in the Juvenile Justice Social Support System

The work of juvenile adjudication is a comprehensive social endeavor that cannot be accomplished by the judiciary alone. It requires the establishment of a robust juvenile justice social support system, leveraging the synergy between "political and legal coordination" and "societal collaboration". However, several issues exist in practice:

(1) Inadequate Judicial Collaboration between Government Agencies: Various stages of juvenile criminal cases, such as social investigations, custodial transfers, case disposition, community corrections, and follow-up assistance, necessitate cooperation and coordination among different government departments involved in political and legal matters. In practice, two problems persist. Firstly, there is limited communication and insufficient collaboration between these agencies. Mechanisms for collaboration in areas such as juvenile admissions of guilt, sealing of minor offenses, judicial assistance, and post-sentencing rehabilitation have yet to be fully established, resulting in ad-hoc coordination efforts rather than standardized procedures. Secondly, agencies operate independently, leading to resource duplication. Different political and legal agencies engage in repetitive work at various stages of litigation. For example, when the prosecutor's office provides psychological counseling and assistance to juveniles involved in criminal cases, the court later duplicates these efforts, leading to both resource wastage and suboptimal results. Some victims and guardians may also develop resistance to these repeated interventions.

(2) Incomplete Coordination Mechanisms for Functional Departments: In juvenile adjudication, a considerable amount of work involves tasks such as psychological counseling, social investigations, social guardianship, social assistance, placement assistance, and post-sentencing follow-up. Courts may find it challenging to allocate sufficient resources and maintain the required expertise in these areas. Thus, there is a need to involve external social organizations. However, the development of social organizations in China is still in its infancy, lacking specialization and sufficient capacity. Additionally, the structures responsible for child protection are scattered among various government departments, each with its own responsibilities. This fragmented approach hinders effective collaboration, leading to overlapping responsibilities and diluted accountability. The juvenile justice social support system cannot fully leverage its potential due to a lack of coordination and cooperation between these entities. Although courts collaborate with functional departments such as the Communist Youth League, Women's Federation, Youth Federation, Student Union, Community Work Committee, Civil Affairs, Labor Union, schools, and neighborhood committees, the depth of this collaboration remains limited, and the collective social

efforts to protect minors have not yet fully materialized.

(3) **Insufficient Family and School Responsibilities:** A detrimental social environment is a significant contributing factor to minors becoming involved in criminal activities, making families and schools crucial in preventing juvenile delinquency. However, in some cases, families and schools have failed in their responsibilities. For example, some minors lacking parental care (particularly left-behind children and those from families with a history of crime) become ensnared in internet pornography and gaming, seriously affecting their physical and mental health and potentially leading to criminal behavior. In some instances, early signs of bullying behavior in schools are not promptly detected or addressed, allowing negative behaviors to escalate into criminal activities or recidivism. Juvenile offenders who complete their sentences often face challenges when returning to school, making it difficult to continue their education. These children may have a higher likelihood of reoffending upon reintegrating into society. In some schools, lax supervision of teachers and insufficient knowledge of their students' backgrounds have resulted in instances of sexual assault and harassment by teachers against their students, with the school administration failing to take timely action.

3. The Path to Enhance Juvenile Courts and Their Development Direction

The adjudication of cases involving minors has faced significant challenges amidst the wave of judicial reform. To overcome these challenges and ensure the sustainable development of specialized juvenile adjudication institutions, it is crucial to gather momentum. In this regard, the author presents several recommendations.

3.1. Establishment of Organizational Structures for Juvenile Courts to Create a Coordinated and Unified Adjudication System

The development of organizational structures for juvenile courts is a crucial component in the construction of a juvenile justice system. As previously discussed, the unclear positioning of juvenile adjudication work and the fluctuation in the establishment and merging of institutions have hindered progress. Therefore, prioritizing the establishment of specialized juvenile court structures is essential.

(1) **Building a three-tiered court system for seamless coordination.** The key to the reform of juvenile adjudication lies in a top-down approach. Provincial high people's courts should establish dedicated juvenile and family (comprehensive) adjudication divisions to oversee and coordinate juvenile adjudication across the province. Intermediate-level courts should serve as pivotal units bridging the gap, while grassroots courts should play the primary role in driving advancements in juvenile adjudication.

(2) **Tailoring the specialization of adjudication structures based on practicality.** Courts with the capacity should actively seek support from their local party committees and governments to establish independent juvenile and family (comprehensive) adjudication divisions with dedicated staffing. For courts that do not yet meet these conditions, it is essential to ensure the effective operation of established juvenile courts. To maintain a relative independence between juvenile criminal and family adjudication teams, it is suggested that each team comprises at least one criminal and one civil judge, with additional judicial assistants and clerks as needed.

(3) **Cultivating a stable and professional team for juvenile adjudication.** It is necessary to select judges with high professional quality and strong professional ability, who are familiar with the physical and mental characteristics of minors, and are good at doing juvenile trial work, so as to ensure the stability of the team and achieve special case management. It is also necessary to set up a special trial team centered on judges equipped with special judicial support personnel for minors in

order to achieve the optimization and integration of trial resources. For example, it can be equipped with "1mm N" or "3th N" juvenile annual trial team to set up criminal and family trial teams involving minors. If the number of administrative cases is small, it can be randomly divided into cases or be tried by a designated team. Special training should be organized at least once a year to improve the trial capacity of cases involving minors.

(4) Enhancing performance assessment in alignment with juvenile adjudication principles. It is necessary to change the assessment standard of the number of cases only, and bring the work of social investigation, psychological counseling, court education, extended help and education, publicity of the rule of law, and participation in the comprehensive management of public security into the scope of performance evaluation. This adjustment encourages the scientific, professional, and comprehensive development of juvenile adjudication work. These recommendations aim to create a robust foundation for the development of specialized juvenile courts and the professionalization of juvenile adjudication in the judicial system.

3.2. Respecting the Legal Rights of Minors and Adjusting the Scope of Juvenile Jurisdiction Rationally

Firstly, the jurisdiction of juvenile courts should be expanded from cases involving juvenile criminal offenses to cases involving serious misconduct and juvenile civil cases. If the jurisdiction of juvenile courts is limited solely to juvenile criminal cases, the number of cases is indeed too small, especially considering the significant decrease in the number of juvenile criminal cases at the grassroots level. This expansion is not only aimed at addressing the practical issue of insufficient cases in juvenile courts but, fundamentally, it is more conducive to the extended protection of the rights of minors and comprehensive protection.

Secondly, juvenile civil cases can be included within the jurisdiction of juvenile courts, but this should be done pragmatically and cautiously. I suggest primarily considering three categories of cases closely related to the personal rights and bodily health rights of minors: first, cases involving disputes over personal rights where one or both parties are minors; second, liability disputes where the tortfeasor is a minor and cases where the victim is a minor, and it is more suitable for the juvenile court to handle such liability disputes; third, cases involving protective orders for the personal safety of minors. Including these three categories of cases within the scope of cases accepted by juvenile courts not only helps address the issue of insufficient cases caused by juvenile courts handling only criminal cases but also allows juvenile courts to fulfill their functions in a more multifaceted manner.

Finally, there should be careful consideration of whether cases involving child custody, guardianship, visitation, and other civil matters related to minors should be included in the jurisdiction of juvenile courts. Objectively speaking, this is a very complex issue. On one hand, whether family disputes involving child custody, guardianship, and visitation are closely related to the rights of children remains to be deliberated. In theory, all issues related to the upbringing, visitation, and guardianship of children should naturally be entrusted to juvenile courts, as they are closely linked to a child's upbringing. However, in practice, especially in recent years with the expansion of juvenile jurisdiction to family cases, the focus of such litigation often revolves around family relationships and the interests of family members, and issues related to "children" often appear as one of many aspects of family disputes or even as bargaining chips in disputes between parties. This means that in these cases, the core interest of the litigation often shifts from child rights to family interests. Additionally, if such cases were to be included in the jurisdiction of juvenile courts, a more practical concern is that family cases have consistently remained at a high level in recent years, with an extremely large number of cases involving child custody, guardianship,

visitation, and related matters. Therefore, if these cases were all bundled into the jurisdiction of juvenile courts, the specialized institutions and personnel responsible for juvenile case adjudication would likely face an overwhelming workload.

Based on this, the author believes that the scope of juvenile courts can be adjusted as follows:

For criminal cases, this includes cases where the defendant was under 18 years old at the time of the alleged crime and under 20 years old at the time of the court's filing; cases involving crimes committed by students who were under 22 years old at the time of filing while still enrolled in school; cases of sexual offenses against minors such as rape and molestation; cases involving serious crimes against the personal rights of minors, including murder, injury, kidnapping, trafficking, abuse, and abandonment; cases involving changes in the execution of sentences such as parole, probation, temporary release, or probation revocation for offenders in the above-mentioned criminal cases; and other criminal cases involving minors that are deemed more appropriate for juvenile court.

For civil cases, a more practical and cautious approach can be taken to define the scope. This includes cases involving child custody, guardianship, and visitation, but it is not recommended to include complex marriage and family disputes; cases involving disputes over personal rights where one or both parties are minors; liability disputes where the tortfeasor is a minor and cases where the victim is a minor and it is more appropriate for juvenile court to handle such liability disputes (excluding cases involving a significant number of traffic accidents); cases involving protective orders for the personal safety of minors; and other civil cases involving the protection of the rights of minors.

For administrative cases, this mainly refers to administrative litigation cases where the parties involved are minors.

3.3. Advancing the Transformation of the Court's Role and Establishing a Juvenile Justice Social Support System

The protection of minors is a shared responsibility of the entire society. Based on the concept of "professional case handling and socialization of preventive rights protection", in the pre-trial and post-trial processes, the court should transform its functional role from being a leader and practitioner to becoming a guide and organizer, integrating social work into juvenile justice. It is necessary to strengthen the construction of the judicial social support system for minors, cultivate and make use of professional social forces, and formulate and issue a list of needs. In addition, it is necessary to guide social professional organizations to provide targeted services. This will help to promote the effective implementation of measures such as assistance to minor victims, placement and education of juvenile criminals, and protection of the civil rights and interests of minors. Four teams should be established:

(1) Specialized Lawyers for Cases Involving Minors: Establish specialized legal aid organizations and a team of lawyers for minors, harnessing lawyers' roles in legal aid, psychological counseling, and post-sentencing assistance in juvenile justice, promoting the construction of a juvenile justice professional community.

(2) Psychological Counselors Database: The involvement of psychological counselors has greatly assisted in the healing function of juvenile courts. Counselors can gather information through social assessments about the defendant's family situation, social interactions, and personal behavior before the crime, allowing for individualized psychological counseling and rehabilitation programs.

(3) Teacher Teams: Schools play a crucial role in the protection of minors, and juvenile justice relies on cooperation with schools and teachers. Juvenile courts can collaborate with schools to

conduct legal education activities, create self-protection and crime prevention materials for minors, organize mock trials, appoint legal deputy principals, and establish "caring bases", among other initiatives.

(4) Social Volunteer Teams: It is necessary to give full play to the advantages of peer help and education, select outstanding college students' representatives as social volunteers, communicate one-to-one with misstep minors, and awaken the sincerity of the wrong teenagers. In conclusion, it is essential to activate the entire society's supervision and educational support forces to create an environment of care and concern for minors.

In recent years, some scholars have proposed the establishment of juvenile courts. They believe that the greatest value of independent and specialized juvenile courts lies in the pursuit of the "possibility of saving the majority of children". While this may not be an absolute fact, it is certainly worth trying, choosing, and aspiring to, just as most people would choose a children's hospital when their child falls ill. [2] From the current perspective of the number of minors handled by Chinese courts, the availability of specialized juvenile judges, the level of economic development in different regions, and the accompanying judicial mechanisms, the conditions for the widespread establishment of juvenile courts are not yet mature. At least for the foreseeable future, juvenile courts are unlikely to become the mainstream organizational structure of China's juvenile justice system. However, this does not mean that it cannot be a direction to strive towards.

4. Conclusion

This paper has analyzed the current challenges and development bottlenecks facing juvenile courts, explored the path of professionalization and institutionalization of juvenile courts, and provided directions for the future development of juvenile courts. The paper proposes the establishment of organizational structures for juvenile courts, the rational adjustment of jurisdictional boundaries, and the construction of a juvenile justice social support system. This provides valuable insights for further research on the path of professionalization and institutionalization of juvenile courts, despite some limitations in this area.

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