

"Markel, Collins, and Leib have achieved a singular feat of scholarly analysis. Not only have they brought into sharp focus a previously unremarked set of inter-related policies affecting the family. They have also irrefutably proven those policies to be in deep conflict with one another and with the most fundamental tenets of our criminal justice system."

—Dan Kahan
Yale Law School

"This path-breaking work should be regarded as a major scholarly achievement even by those who disagree with some of the authors' normative conclusions. They have fundamentally re-imagined the domain where family law intersects with criminal law, moving us well beyond the intractable debates over law enforcement responses to domestic violence and identifying many promising new directions for research."

—Michael O'Hear
Marquette University Law School

"Behind America's amazingly punitive penal policies lies a strong cultural fixation with the criminal law as a barrier between stranger danger and the putatively warm and safe world of the family. But as the authors of this strikingly original book reveal, this myth belies a complex web of doctrines that few will recognize from either our treatises or television serials. Viewed together for the first time, these doctrines frequently exhibit a bizarre patchwork of undue leniency, harshness, and discrimination—a pattern the authors effectively expose as inconsistent with our legal values."

—Jonathan Simon
UC Berkeley School of Law
Author of *Governing Through Crime* (Oxford 2007)

"This boldly original book takes on the astonishingly under-examined subject of the explicit and conscious connections drawn between our criminal law institutions and the family. It examines and critiques our laws governing an array of intersections between crime, punishment and the family. *Privilege or Punish* should occupy an enduring place on both the criminal law and family law sides of our legal education and discourse."

—Robert Weisberg
Stanford Law School

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PRIVILEGE
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PRIVILEGE OR PUNISH

Criminal Justice
and the Challenge
of Family Ties

Dan Markel

Jennifer M. Collins

Ethan J. Leib



This book answers two basic but under-appreciated questions: first, how does the American criminal justice system address a defendant's family status? And, second, how should a defendant's family status be recognized, if at all, in a criminal justice system situated within a liberal democracy committed to egalitarian principles of non-discrimination? After surveying the variety of "family ties benefits" and "family ties burdens" in our criminal justice system, the authors explain why policymakers and courts should view with caution and indeed skepticism any attempt to distribute these benefits or burdens based on one's family status. This is a controversial stance, but Dan Markel, Jennifer M. Collins, and Ethan J. Leib argue that in many circumstances there are simply too many costs to the criminal justice system when it gives special treatment based on one's family ties or responsibilities.

Privilege or Punish breaks new ground by offering an important synthetic view of the intersection between crime, punishment, and the family. Although in recent years scholars have been successful in analyzing the indirect effects of certain criminal justice policies and practices on the family, few have recognized the panoply of laws (whether statutory or common law-based) expressly drawn to privilege or disadvantage persons based on family status alone. It is critically necessary to pause and think through how and why our laws intentionally target one's family status and how the underlying goals of such a choice might better be served in some cases. This book begins that vitally important conversation with an array of innovative policy recommendations that should be of interest to anyone interested in the improvement of our criminal justice system.