

What is the role of the federal government in criminal law?

Crime has long been considered the concern of state government. States are authorized to protect their citizens from criminal activity by prosecuting criminals. States are also authorized to determine what constitutes a crime statutorily (through the legislature) and through common law. The federal government, on the other hand, has limited jurisdiction and must link any crimes it prosecutes to its powers under the Constitution. The most commonly used powers to support federal criminal legislation are the commerce power, the taxing power, and the postal power. While Congress has used these powers all along to define crimes, there has been an explosion of federally created crimes in the last half of the 20th century. Most of the laws controlling white-collar crime, like the RICO Act and the Victims and Witnesses Protection Act have been passed since 1950.

In addition, Congress has become increasingly involved in the "war on drugs" with the creation of various drug statutes. Due to the severity of the penalties, often, local prosecutors prefer to have drug charges prosecuted in federal court rather than file state charges. Most federal laws have as their rationale that the particular crime addressed needs a uniform response nationwide, and due to the nature of drug crimes (particularly distribution), it is difficult to prosecute drug crimes on a state-by-state basis.

Examples of successful federal criminal legislation are the federal gun laws and federal computer laws. The federal gun laws provide uniformity and the federal computer laws make it possible to punish Internet crime.

The U.S. Constitution has always played a role in criminal law because it defines important individual rights that must be preserved even in a state prosecution involving a state crime. The Constitution guarantees a right to a trial by jury in open court, the right to cross-examine witnesses, the right to remain silent (on grounds of self-incrimination), the presumption of innocence, the right to be represented by a lawyer, and the right to be free of cruel or unusual punishment. States are required to pay for attorneys for indigent offenders, and federal agencies provide oversight to state prisons to ensure compliance with these constitutional requirements.