

USE OF FORCE BY LAW ENFORCEMENT IN THE UNITED STATES: A HUMAN RIGHTS-BASED REFORM AND THE IRELAND DECISION MAKING MODEL

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TABLE OF CONTENTS

INTRODUCTION

I. THE IRISH APPROACH TO LAW ENFORCEMENT USE OF FORCE

- A. *History of Law Enforcement in Ireland*
- B. *The Garda Decision Making Model: Ireland's Unique Approach to the Use of Force*
- C. *The Legal Framework for the Use of Force by An Garda Síochána*

II. THE UNITED STATES APPROACH TO LAW ENFORCEMENT USE OF FORCE

- A. *History of Law Enforcement in the United States*
- B. *The General Legal Framework for the Use of Force by United States Law Enforcement*
- C. *Law Enforcement Use of Force in the States Themselves*

III. ANALYSIS

- A. *Characterizing the Use of Force*
- B. *The Approach to the Use of Force*

IV. RECOMMENDATION

CONCLUSION

INTRODUCTION

At 11:30 p.m. on March 13, 2013, in Martinsburg, West Virginia, a black man experiencing homelessness was stopped by a police officer for walking in the street, rather than on the sidewalk.¹ This encounter would leave the man, Wayne Jones, dead at the hands of five police officers.² Jones was 50-years old, weighed 162 pounds, was homeless, and had been diagnosed with schizophrenia.³ When asked if he was carrying a weapon, Jones first asked what a weapon was and then answered that he did have “something.”⁴ The officer called for back-up and demanded Jones put his hands on the police car.⁵ Jones moved away from the officer and asked what the officer was trying to do.⁶ In response, the officer

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1. *Estate of Jones v. City of Martinsburg*, 961 F.3d 661, 663 (4th Cir. 2020).
2. *Id.*
3. *Id.* at 664.
4. *Id.*
5. *Id.*
6. *Id.*

discharged his TASER on Jones.⁷ Then, another officer arrived on the scene as Jones was being tased, and the second officer discharged his TASER on Jones as well.⁸ Jones then hit one of the officers in the face and turned to run down the street.⁹ The second officer pursued Jones. When Jones raised his hands, the officer assumed this meant Jones was preparing to assault the officer.¹⁰

Jones was then cornered into an entryway of a closed store. He pleaded with the officers, saying “I didn’t do anything wrong.”¹¹ The officers attempted to arrest Jones and put him in a chokehold.¹² Now, four officers were surrounding Jones, who was laying on the ground in the street in a chokehold being administered by a fifth officer.¹³ The officers began calling Jones names, kicking Jones, and tasing Jones for the third time that night.¹⁴ Then, the officers noticed Jones was wielding a small knife.¹⁵ The officers distanced themselves from Jones, whose arm dropped lifelessly. Jones lay motionless on the ground when all five officers drew their firearms. Jones was ordered to drop the weapon, but he lay on the ground motionless and unresponsive.¹⁶ A few seconds later, the five officers discharged a total of 22 rounds as Jones lay in the street.¹⁷

The facts of this case, occurring in 2013, were presented to the Fourth Circuit in the *Estate of Jones v. City of Martinsburg* alleging excessive use of force in violation of the Fourth Amendment.¹⁸ The facts of *Estate of Jones* provide a startling account of the characterization of the use of force by law enforcement in the United States. While Jones’ case may seem extreme, it depicts the broad discretion of use of force policies and practices in law enforcement in the United States. Under the legal framework of law enforcement use of force, law enforcement officers are permitted to use force as is reasonably necessary. The issue is that with a broad definition of when and how the use of force may be applied by law enforcement, the use of force is often overused and abused by law enforcement in the United States. As the Fourth Circuit concluded in *Estate of Jones*, “[t]his has to stop.”¹⁹

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 655.

12. *Id.* at 665.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 666. (The complaint specifically alleged three claims under 18 U.S.C. § 1983: “(1) that the five named officers used excessive force in violation of the Fourth Amendment; (2) that the officers violated the Fourteenth Amendment by killing Jones, thereby wrongfully depriving his family of a familial relationship with him; and (3) that the City of Martinsburg was liable under a variety of *Monell* theories, including failure to train and failure to discipline the police officers.”)

19. *Estate of Jones*, 961 F.3d at 673.

The use of force by law enforcement in the United States has come under significant scrutiny beginning in the Summer of 2020.²⁰ However, the truth shadowing law enforcement's use of force policies in the United States is that the scrutiny has persistently and historically existed. Despite outcries in the form of protests from the public, the emergence of the Black Lives Matter movement, and law enforcement efforts to reform, the use of force by law enforcement has been slow to adapt and evolve. One reason for this failure to evolve is because the use of force policies have not undergone appropriate reform. A holistic approach to reform is necessary to address the deeply ingrained, systematic issues of law enforcement use of force policies.

Previous police reform efforts have included “more restrictive rules governing the exercise of police discretion, better officer training, more diverse officers, greater responsiveness to civilian complaints, and more robust community engagement and communication.”²¹ Additionally, many reform efforts focus on police in their roles as crime-control agents, rather than recognizing the full range of roles law enforcement officers fill.²² This Note will suggest the use of force should be reformed from a human rights-based approach by using a holistic, overhauling method of reform in the United States. The United States should consider Ireland as a model for reform regarding law enforcement's use of force.

Ireland has a similar history of slow reform to law enforcement use of force policies. Within the last few years though, the Irish Council for Civil Liberties has taken measures to provide an explicit, step-by-step guide for how law enforcement in Ireland can shift towards human rights-based policing.²³ Law enforcement in Ireland has faced concerns over police reform, and the police force has begun responding to the calls for reform by implementing a national decision-making model. Law enforcement in Ireland and the United States have distinct similarities, but also significant differences.

An Garda Síochána, the national police force in Ireland, has undergone significant reform in the past fifteen years. There have been many aspects to changing law enforcement policies, but one significant development was the Garda Decision Making Model.²⁴ This Model guides police officers in every

20. Jay Reeves & Kat Stafford, *Use of Force Criticized in Protests about Police Brutality*, AP NEWS (June 1, 2020), <https://apnews.com/article/f2187147d6b47449332b71f811bff23a> [<https://perma.cc/7N6K-RRNZ>].

21. Nirej Sekhon, *Essay: Police and the Limit of Law*, 119 COLUM. L. REV. 1711, 1713-14 (2019).

22. Monica C. Bell, *Article: Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655-56 (2020).

23. ALYSON KILPATRICK, A HUMAN RIGHTS-BASED APPROACH TO POLICING IN IRELAND 112, 122 (2018) <https://www.iccl.ie/wp-content/uploads/2018/09/Human-Rights-Based-Policing-in-Ireland.pdf> [<https://perma.cc/L9PG-2K5B>].

24. *Garda Decision Making Model*, Assistant Comm'r, Governance & Accountability (2019), <https://www.garda.ie/en/about-us/our-policing-principles/garda-decision-making-model.pdf>

aspect of their duties, including the use of force, to apply human rights-based policing. Such a model prescribes a consistent means for deciding how and when to use force during police encounters. The Model also encompasses the guiding principles for the Garda, with an emphasis on respect for constitutional and human rights and the Code of Ethics for the Garda.²⁵ The approach to reform undertaken in Ireland provides unique insights and recommendations for possible reform to the use of force by law enforcement in the United States.

This Note will address the issue of how to effectively reform the use of force by law enforcement in the United States. Policing in the United States is in crisis. Reform is necessary now more than ever. A substantial overhaul or a paradigm change to the approach to policing in the United States is necessary not only to prevent the loss of more lives at the hands of police using excessive force but to fully enshrine the principles of freedom and democracy by embracing every American's human rights. While this reform is needed, it should be recognized that no one method of reform will work on its own, and reform will not be achieved immediately. This Note suggests reform to law enforcement use of force must be accomplished through a legal framework by providing a more uniform approach, or principle, to use of force policies, as well as a cultural framework embraced by law enforcement to restructure and rewrite the general orders of police departments. The road to reform of law enforcement in Ireland serves as an effective model for how substantial reform to law enforcement can be achieved in the United States.

To analyze this issue, this Note will compare the policing approaches to the use of force by law enforcement in Ireland and the United States. In Part I, this Note will discuss the Irish approach to the use of force policies, beginning with the history of the method and a cultural context discussing why the Garda Decision Making Model was the approach chosen in Ireland. In Part II, this Note will discuss the United States' approach which involves the general principles established by the Supreme Court and specific examples of law enforcement practices of the Indianapolis Metropolitan Police Department and the Cleveland Police Department. This Note will then compare the approaches analyzed in Parts I and II. Finally, this Note will recommend the Irish approach as a model for use of force policies in law enforcement.

I. THE IRISH APPROACH TO LAW ENFORCEMENT USE OF FORCE

A. History of Law Enforcement in Ireland

Ireland's tradition of organized policing began in 1822 with the "County Constabulary," which "was a uniform police force formed on a regional basis."²⁶ The County Constabulary was replaced in 1836 by the Irish Constabulary (later

[<https://perma.cc/26DT-WB45>] [hereinafter *Garda Decision Making Model*].

25. *Id.*

26. An Garda Síochána, *Our History*, <https://www.garda.ie/en/About-Us/Our-History/> [<https://perma.cc/5AGK-USJZ>].

known as the Royal Irish Constabulary, or “RIC”), and the Dublin Metropolitan Police.²⁷ Ireland’s history of law enforcement is inextricably entwined with its history as an independent state. In the early 1920s, Ireland split from Great Britain, establishing the independent Republic of Ireland.²⁸ However, the northern part of Ireland, known as Northern Ireland, remained under Great Britain’s control. As a result of Ireland’s independence, the Irish Civil War was fought between the “Unionists” in Northern Ireland and the “Nationalists” in the rest of the State of Ireland.²⁹ The Unionists wanted to remain loyal to, and under the sovereignty of, the U.K., while the Nationalists believed Northern Ireland should be independent and join the Republic of Ireland.³⁰ As a result of the Civil War in Ireland, the former police force, the RIC, was replaced by “The Civic Guard” in 1921.³¹ This new police force was renamed “An Garda Síochána na hÉireann” in 1923.³² The Garda Síochána is still the police force in Ireland today.

The Garda Síochána faced significant public issues with corruption due to a series of scandals arising in the 1970s and 1980s.³³ Violence and fighting also reached a climax between what were now armed groups of Nationalists and Unionists.³⁴ As a result of the fighting between the Irish Republican Army (IRA), other armed groups from the North, and British troops, an agreement was needed to stop the bombings and shootings.³⁵ On April 10, 1998, after 30 years of conflict, the Belfast Agreement, also known as the Good Friday Agreement, was signed by British Prime Minister Tony Blair and Irish Prime Minister Bertie Ahern.³⁶ The Agreement established a shared system of governance by creating a democratically elected Assembly, a North/South Ministerial Council and a British-Irish Council, and the British-Irish Governmental Conference.³⁷

Before the Good Friday Agreement, the Garda faced scrutiny in response to the Criminal Justice Act of 1984.³⁸ This Act also exacerbated the corruption

27. *Id.*

28. *What Was the Good Friday Agreement*, BBC (Apr. 10, 2018) <https://www.bbc.co.uk/newsround/14118775> [<https://perma.cc/ZG8F-76R4>].

29. *Id.*

30. *Id.*

31. An Garda Síochána, *supra* note 26.

32. *Id.*

33. Vicky Conway, *A Sheep in Wolf’s Clothing: Evaluating the Impact of the Garda Síochána Ombudsman Commission*, 43 IRISH JURIST (N.S.) 109, 110 (2009).

34. *What Was the Good Friday Agreement*, *supra* note 28.

35. *Id.*

36. *Id.*; see, e.g., Agreement Between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland, ITS No. 18/2000 (Ir.), <https://www.dfa.ie/media/dfa/alldfawebsitemedia/treatyseries/uploads/documents/treaties/docs/200018.pdf>, [<https://perma.cc/D6B5-B3FL>] [hereinafter *The Good Friday Agreement*].

37. *The Good Friday Agreement*, *supra* note 36.

38. See, e.g. Criminal Justice Act, 1984 (SI 22/1984) Sec. 4 (Ir.), <http://www.irishstatutebook.ie/eli/1984/act/22/enacted/en/html> [<https://perma.cc/T3B4-6U4K>].

issues facing the Garda by extending police powers to the extent that officers could arrest without any charge for a serious offense.³⁹ Another event that led to the recognized need for reform of law enforcement in Ireland was the Morris Tribunal.⁴⁰ The Morris Tribunal, named after the chairman Mr. Justice Frederick Morris, investigated reported allegations of Gardaí misconduct, or more specifically, “unethical and criminal behaviour by gardaí” in Donegal County.⁴¹ The Morris Tribunal first sat in 2003 and concluded in 2007, with the first report published in 2004.⁴² The First Report of the Morris Tribunal in 2004 found Donegal County members of the Garda “were responsible for ‘setting up’ arms finds to advance their careers.”⁴³ In other words, the officers planned a fake find of explosives that were planted by officers at the crime scene. The report found “gross negligence” on the part of the Garda members.⁴⁴

The events in Donegal County resulting in the Morris Tribunal and the Good Friday Agreement ultimately culminated in Ireland’s first attempt to reform the police force: the Garda Act 2005.⁴⁵ The Garda Act 2005 brought significant reform to the Garda, most notably by establishing the Policing Principles incorporated in the Code of Ethics for the Garda Síochána.⁴⁶ Section 7 of the Garda Act 2005 states that

the function of the Garda Síochána is to provide policing and security services for the State with the objective of (a) preserving peace and public order, (b) protecting life and property, (c) vindicating the human rights of each individual, (d) protecting the security of the State, (e) preventing crime, (f) bringing criminals to justice, including by detecting and investigating crime, and (g) regulating and controlling road traffic and improving road safety.⁴⁷

39. Conway, *supra* note 33, at 110; *see also* Criminal Justice Act, 1984 (SI 22/1984) Sec. 4 (Ir.), <http://www.irishstatutebook.ie/eli/1984/act/22/enacted/en/html> [<https://perma.cc/T3B4-6U4K>].

40. Conway, *supra* note 33, at 111.

41. *Timeline of Morris Tribunal of Inquiry*, THE IRISH TIMES, (May 7, 2008), <https://www.irishtimes.com/news/timeline-of-morris-tribunal-of-inquiry-1.822357>, [<https://perma.cc/L9X9-D66V>]. *See e.g.* GOV’T OF IR., REPORT OF THE TRIBUNAL OF INQUIRY, REPORT ON EXPLOSIVES “FINDS” IN DONEGAL (2004), <http://www.justice.ie/en/JELR/Morris1stRpt.pdf/Files/Morris1stRpt.pdf> [<https://perma.cc/E8DY-AJDL>] [hereinafter *First Report on the Morris Tribunal*].

42. *Timeline of Morris Tribunal of Inquiry*, *supra* note 41.

43. *Id.* *See e.g.* First Report of the Morris Tribunal, *supra* note 41.

44. First Report of the Morris Tribunal, *supra* note 41.

45. Conway, *supra* note 33, at 111.

46. *See e.g.* Garda Síochána Act 2005 (SI 20/2005) (Ir.), <http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/html> [<https://perma.cc/RNV9-7YHD>]; *see also* CODE OF ETHICS FOR THE GARDA SÍOCHÁNA (2017), https://www.policingauthority.ie/assets/uploads/documents/Code-of-Ethics-for-the-Garda-Sochna_1.pdf [<https://perma.cc/V8UT-YESL>].

47. Garda Síochána Act 2005 (SI 20/2005) (Ir.), <http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/html> [<https://perma.cc/RNV9-7YHD>].

The Code of Ethics for the Garda Síochána was established in response to the Garda Act 2005. The Garda Code “sets out nine ethical standards and the ethical commitments required to meet these standards.”⁴⁸ The specific standards set out in the Code are (1) duty to uphold the law; (2) honesty and integrity; (3) respect and equality; (4) authority and responsibility; (5) police powers; (6) information and privacy; (7) transparency and communication; (8) speaking up and reporting wrongdoing; and (9) leadership.⁴⁹ The Code emphasizes policing services must be provided “independently and impartially, in a manner that respects human rights, and in a manner that supports the proper and effective administration of justice.”⁵⁰ The intention is for the Code to permeate all areas of the work of the Garda Síochána.⁵¹

Following the Garda Act 2005, the Garda continued to face criticism over its practices and techniques. In analyzing whether a culture change to the Garda had occurred after the Morris Tribunal, the Smith Tribunal report of December 2013 found a culture change had not occurred.⁵² The Smithwick Tribunal report found that “there prevails in An Garda Síochána today a prioritisation of the protection of the good name of the force over the protection of those who seek to tell the truth.”⁵³ In other words, the Garda had continued to be a self-serving force, focused on protecting each other rather than effectively protecting the communities they served.

In 2014, Ireland passed the Irish Human Rights and Equality Commission Act which established the Irish Human Rights Commission with the responsibility of facilitating the exercise of human rights and equality.⁵⁴ This Act required that “all public bodies are obliged to have regard to human rights standards in their policies and practices.”⁵⁵ The Irish Human Rights and Equality Commission Act 2014 extended to the Garda as a public body, and thus required the Garda’s policies and practices to have regard for human rights standards. However, the Garda did not evolve according to the standards set forth by the 2014 Act. In 2017, the Fennelly Commission found further criticism of the Garda,

48. CODE OF ETHICS FOR THE GARDA SÍOCHÁNA, *supra* note 46.

49. *Id.*

50. *Id.*

51. *Id.*

52. GOV’T OF IR., REPORT OF THE TRIBUNAL OF INQUIRY INTO SUGGESTIONS THAT MEMBERS OF AN GARDA SÍOCHÁNA OR OTHER EMPLOYEES OF THE STATE COLLUDED IN THE FATAL SHOOTINGS OF RUC CHIEF SUPERINTENDENT HARRY BREEN AND RUC SUPERINTENDENT ROBERT BUCHANAN ON THE 20TH MARCH 1989 154 (2013) <http://cdn.thejournal.ie/media/2013/12/smithwick-final-report.pdf> [<https://perma.cc/PKX8-492J>] [hereinafter *The Smithwick Tribunal Report*].

53. *Id.*

54. Irish Human Rights and Equality Commission Act 2014 (SI 25/2014) (Ir.), <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html> [<https://perma.cc/YNG9-7FW9>].

55. KILPATRICK, *supra* note 23, at 4.

this time in the form of illegal telephone recordings during an investigation.⁵⁶

The Irish Human Rights and Equality Commission Act 2014, the events of the 2013 Smithwick Tribunal Report, the 2017 Fennelly Commission Report, and other reports finding criticism of the Garda, culminated in leading the Irish Council for Civil Liberties to publish the “Human Rights-Based Approach to Policing Report in 2018.”⁵⁷ One critique from the report was that while the Garda Code, established by the Garda Act 2005, recognized the importance of respecting human rights in their policing approach a mere recognition of human rights was not enough.⁵⁸ The report urged further reform was necessary to provide a clear application of how to safeguard human rights while policing.⁵⁹ After the Report was published in 2018, the Garda Decision Making Model was established in 2019.

*B. The Garda Decision Making Model: Ireland’s Unique Approach
to the Use of Force*

The Garda Decision Making Model (GDMM) was established in 2019 as a method of reforming the national police force in Ireland.⁶⁰ The GDMM “is an integrated tool to assess risk at the earliest stages of decision making.”⁶¹ The purpose of the model is to ensure “consistency of decision making even in the most dynamic circumstances.”⁶² At the center of the model are Constitutional and Human Rights, as well as the Code of Ethics. These principles are the core of the Model to require primary consideration by law enforcement.⁶³ The inner circle of the model represents how “the process of decision making consist[s] of five stages, in a continuous cycle.”⁶⁴ The outer circle “sets out the contextual environment in which any decision is to be made, in a policing context.”⁶⁵ The GDMM provides a graphic illustrating the stages of the cycle which make up the model itself. This graphic provides a clear and easy picture of how to follow and implement the model in Garda policies and practices.

As of 2018, Garda members were facing criticism over their use of force and other policing practices.⁶⁶ The criticism was made apparent in the 2018 Human

56. *Id.* at 41.

57. *Id.* at 4.

58. *Id.*

59. *Id.* at 35.

60. *Garda Decision Making Model*, *supra* note 24, at 2. A picture of the Model can be viewed using this link: <https://www.garda.ie/en/about-us/our-policing-principles/garda-decision-making-model.pdf> [<https://perma.cc/26DT-WB45>].

61. *Id.*

62. *Id.*

63. *Id.* at 2.

64. *Id.* at 3.

65. *Id.* at 5.

66. Mary Carolan, *Problems with Use of Force by Gardai Highlighted in Report*, THE IRISH TIMES, (Sept. 14, 2018), <https://www.irishtimes.com/news/crime-and-law/problems-with-use-of->

Rights-Based Approach to Policing in Ireland report by Alyson Kilpatrick of the Irish Council for Civil Liberties.⁶⁷ In response to the lack of reform to Garda policies and practices following the Irish Human Rights and Equality Commission Act of 2014, the Irish Council for Civil Liberties began to advocate for Garda reform from a human rights-based approach.⁶⁸

The executive summary reported the main findings of the report. First, a human rights-based approach to policing by the Garda was required by law in Ireland, primarily because of the Irish Human Rights and Equality Commission Act 2014.⁶⁹ To achieve this, Kilpatrick recommended human rights must be put at the center of all Garda policies and practices.⁷⁰ Shifting to a human rights-based approach would require a change to Gardaí mindset achieved through cultural reform of the police force in Ireland.⁷¹ The report recognized some efforts to reform had been undertaken by the Garda, specifically the 2005 Code of Ethics, but what was needed was a human rights tool to implement the approach to all policies and practices.⁷²

Regarding the use of force by Garda, the Irish Civil Liberties Report recognized that while Gardaí are armed with less-lethal tools, the application of human rights must still be at the center of the use of force policies and practices.⁷³ The Garda does not release statistics on the use of force, which makes it not only challenging to research how the use of force is used in policing contexts, but also the extent to which the use of force complies with human rights standards.⁷⁴ However, it is perceived that the Garda has much higher rates of use of force than law enforcement in neighboring Northern Ireland, and possibly even the Metropolitan Police Service of London.⁷⁵

Most notable about the report though is Kilpatrick provided clear directives and outlined an approach for how to implement the suggested reforms as a result of the report's findings.⁷⁶ The recommended implementation approach included (1) willingness to change; (2) representativeness; (3) expert advice; (4) policy development; (5) developing and delivering effective training; (6) data collection and analysis; and (7) external monitoring/oversight and accountability.⁷⁷ While this list pushing towards reform appears daunting, the report recommended looking to another State which has already implemented a similar reform

force-by-garda%C3%AD-highlighted-in-report-1.3629178 [https://perma.cc/2ZK3-S3BG].

67. KILPATRICK, *supra* note 23.

68. *Id.* at 4.

69. *Id.*

70. *Id.* at 8-9.

71. *Id.*

72. *Id.* at 10; *see also* CODE OF ETHICS FOR THE GARDA SÍOCHÁNA, *supra* note 46.

73. KILPATRICK, *supra* note 23, at 64.

74. *Id.*

75. *Id.*

76. *Id.* at 21-22.

77. *Id.* at 21-27.

approach, specifically Northern Ireland.⁷⁸

Ireland also drew upon international influences when establishing a guiding principle with human rights at the core for the Garda to implement. Specifically, the European Convention on Human Rights⁷⁹ and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials from the Office of the United Nations High Commissioner for Human Rights.⁸⁰ The European Convention for the Protection of Human Rights and Fundamental Freedoms is a treaty that Ireland signed on November 4, 1950, and ratified on February 25, 1953.⁸¹ The European Convention recognized the Universal Declaration of Human Rights as binding law.⁸² Article 1 promulgates the obligation to respect human rights. Section I, Article 2(1) provides that the right to life must be protected by law.⁸³ In the case of use of force, Section I, Article 1(2) states that the use of force must be “no more than absolutely necessary.”⁸⁴ This treaty informed the recommendations and advocacy for reform by the Irish Council for Civil Liberties.⁸⁵

Another influencing source of international law for the reformation of the police force in Ireland was the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁸⁶ While not a treaty itself, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials influenced Garda reformers in Ireland.⁸⁷ The Basic Principles recognize that “law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person”⁸⁸ Additionally, the Principles emphasize that “the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights.”⁸⁹ The general provisions of the Principles provide governments and law enforcement agencies shall implement policies and regulations regarding the use of force and firearms.⁹⁰ According to the Principles,

78. *Id.* at 8.

79. Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 221, E.T.S. 45 [hereinafter *European Convention on Human Rights*].

80. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 110, U.N. Doc. A/CONF.144/28/Rev.1 (1991).

81. *Chart of Signatures and Ratifications of Treaty 005*, COUNCIL OF EUROPE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=BXz36mH1 [<https://perma.cc/YW89-MGTC>].

82. European Convention on Human Rights, *supra* note 79.

83. *Id.*

84. *Id.*

85. *Id.*

86. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *supra* note 80, at 112.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

the use of force may be used only when strictly necessary.⁹¹ Applying the Basic Principles in the context of the European Convention on Human Rights, it can be interpreted that since Ireland has an obligation under international law to respect human rights, then the police force in Ireland shall also have measures in place to respect human rights.

The Garda appear to have already responded to the need to reform policing practices by establishing the Garda Decision Making Model (“GDMM”) in 2019. The GDMM incorporated the recommendations and methods published by the Irish Council for Civil Liberties.⁹² The GDMM also clearly aligned with international and domestic law in Ireland which requires a human rights-based approach to policing. The police force in Ireland recognized the need to reform and was able to adopt new, recommended policies that better protect the officers and communities.

Because officers engage in almost every aspect of social life, it is necessary for a human rights approach to policing not only be recognized in policies but be effectively executed in the daily decisions made by officers in every aspect of the job. Further support for the notion that the national police force in Ireland has responded to the need to reform from a human rights-based approach is the recently published Human Rights Strategy.⁹³

C. The Legal Framework for the Use of Force by An Garda Síochána

This section will provide an overview of the legal framework of the use of force policies by the police force in Ireland. Since the Garda Síochána is a national police force, use of force policies are uniform throughout all of Ireland and are established by the government of Ireland. There are both international law obligations and domestic law obligations to the use of force by law enforcement.⁹⁴ This section will focus on the domestic legal framework of the use of force.

The European Convention on Human Rights Act 2003 is an Irish statute that codifies the European Convention on Human Rights.⁹⁵ The use of force by law enforcement in Ireland may be lethal or less lethal, and thus, the use of force may engage Article 2, the right to life,⁹⁶ Article 3, the right not to be subjected to torture or other ill-treatment,⁹⁷ and Article 8, the right to a private and family life,

91. *Id.*

92. KILPATRICK, *supra* note 23, at 21-27.

93. An Garda Síochána, *Human Rights Strategy 2020-2022* (Nov. 11, 2019), <https://www.garda.ie/en/about-us/publications/policy-documents/> [<https://perma.cc/7RAZ-NJUG>].

94. *See* European Convention on Human Rights *supra* note 79. *See also, infra* Part I, Section B (discussing Ireland’s obligation to respect human rights).

95. European Convention on Human Rights Act 2003 (Act No. 20/2003) (Ir.) <http://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/print.html> [<https://perma.cc/4W9P-HW3A>].

96. European Convention on Human Rights, *supra* note 79.

97. *Id.* at art. 3.

of the European Convention on Human Rights (ECHR).⁹⁸ While the ECHR provides that the use of force that might result in the deprivation of life is permitted, the force must be no more than what is “absolutely necessary.”⁹⁹

Following the legal requirements of the ECHR, the use of force to effectuate arrest may not be absolutely necessary and thus using force to arrest a suspect is limited in Ireland.¹⁰⁰ Additionally, law enforcement officers in Ireland are not armed but do carry incapacitant spray such as pepper spray.¹⁰¹ Only special units of the Garda force carry firearms and TASERS.¹⁰² Thus, most of the use of force in Ireland could be classified as less lethal because it mostly involves the deployment of pepper spray.¹⁰³ It is challenging to otherwise understand the legal framework of the use of force by the Garda because the specific policy directive, the “Overarching Use of Force Policy,” has not been made public.¹⁰⁴ It is unclear why the document has not been made public at this time.

However, the policy documents which have been made public by the Garda shed light on the use of force policies in Ireland. First, the “Public Order Incident Command Policy” is a policy directive for the Garda which governs the “principles and objectives of public order policing.”¹⁰⁵ Part of the rationale for the policy includes the directive for members of the Garda to “uphold and protect the human and constitutional rights of everyone” while public order policing.¹⁰⁶ The policy also contains an explicit section that recognizes human rights and equality requirements for this specific policing practice. As the policy indicates, the use of force may be invoked as a practice of public order policing. The “Public Order Incident Command Policy” should be read in conjunction with the “Overarching Use of Force Policy.”¹⁰⁷

Perhaps most relevant to the use of force policy is the “Incapacitant Spray Policy” for the Garda. This policy directive was only recently made public in the last few years.¹⁰⁸ The “Incapacitant Spray Policy” governs the use of incapacitant spray, equipment otherwise known as a less-lethal use of force.¹⁰⁹ The policy

98. *Id.* at art. 8.

99. *Id.* at art. 2(2). *See also* *McCann v. U.K.*, 21 Eur. Ct. H.R. 97 (1995).

100. *See generally* *Nachova v. Bulgaria*, App. No. 43557/98 and 43579/98 (Feb. 26, 2004).

101. KILPATRICK, *supra* note 23, at 63.

102. *Id.*

103. *Id.* at 63-64.

104. An Garda Síochána, *Policy Documents*, (2021), <https://www.garda.ie/en/about-us/publications/policy-documents/> [<https://perma.cc/E2UT-SP4R>] [hereinafter *Policy Documents*].

105. An Garda Síochána, Policy Directive No. 075, at 2 (2017), <https://www.garda.ie/en/about-us/publications/policy-documents/public-order-incident-command-policy.pdf> [<https://perma.cc/UJ9U-QYT8>]. [hereinafter *Public Order Incident Command*].

106. *Id.*

107. *Id.* at 7.

108. *Policy Documents*, *supra* note 104.

109. An Garda Síochána, Policy Directive No. 047 (2012), <https://www.garda.ie/en/about-us/publications/policy-documents/incapacitant-spray-policy-v-5-0.pdf> [<https://perma.cc/CYD7-8JY9>] [hereinafter *Incapacitant Spray Policy*].

rationale recognized that the Garda is permitted to use force when necessary under Irish law, but it is also the aim of the Garda “to uphold and protect the human and constitutional rights of everyone. . . .”¹¹⁰ Additionally, the policy rationale provides that members of the Garda “will only resort to the use of force if there is no realistic prospect of achieving the lawful objective without exposing members of An Garda Síochána or anyone whom it is their duty to protect, to a real risk of harm or injury.”¹¹¹

While it is commendable that the “Incapacitant Spray Policy” includes the aim of protecting human rights, the policy goes further than just an obligation of recommended conduct. The Policy also includes a section on the GDMM, and how it informs the members of the Garda regarding the decision-making process “to determine, explain, and justify the reasons for their decisions, actions, any use of force, and level of force applied in a given circumstance.”¹¹² In other words, the written standards and objectives for the use of incapacitant spray by members of the Garda are influenced and defined by the GDMM. At the center of the GDMM is human and constitutional rights, meaning the Garda has reformed its use of force policy by establishing the decision to use force, and the level of force to be applied shall be determined by a human rights-based approach.

II. THE UNITED STATES APPROACH TO LAW ENFORCEMENT USE OF FORCE

The United States does not have a national police force, rather the system is decentralized. Decentralization is one factor, but establishing a centralized police force in the United States is not necessarily the solution to appropriate reform, nor is the purpose of this Note. Decisions about law enforcement agencies are typically made at the city or local level of government. However, state and local governments, while free to govern themselves in certain matters, are subject to the federal government, which still exercises authority on certain issues. Constitutional rights are not to be violated by state statutes or local ordinances. Thus, law enforcement in the United States is characterized by federal, state and local laws which all must balance with each other.

A. History of Law Enforcement in the United States

Turning to the United States approach, this section will discuss the creation and history of law enforcement in the United States. Before the mid-twentieth century, policing in the United States was primarily at the municipal level and existed mostly as the “night watchman.”¹¹³ The notion of police as “crime-control

110. *Id.* at 1.

111. *Id.*

112. *Id.* at 3.

113. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> [<https://perma.cc/BAT4-PD5Z>].

agents” did not take hold until the mid-twentieth century.¹¹⁴ The 1960s were plagued with urban riots and related violence, which law enforcement responded to with “order maintenance” practices.¹¹⁵ This order maintenance role represents the notion that “[t]he police were conceived as a tool for managing those segments of the lower classes that the upper and middle classes found threatening.”¹¹⁶

The order maintenance technique is best described by the “Broken Windows” theory established by George Kelling and James Wilson.¹¹⁷ The Broken Windows theory argued that “untended behavior” is a contributing factor to people’s fear and will lead to the breakdown of community controls established to maintain order.¹¹⁸ In other words, “if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken.”¹¹⁹ While Kelling’s and Wilson’s argument that communities are better served if the police take a more on-the-ground approach through community beat policing is an important argument for reform, the method ultimately fails to account for any type of recognition of human rights. In the study, Kelling and Wilson admit they observed law enforcement officers maintaining order by “enforcing the law,” but also just as often officers engaged in “informal or extralegal steps” to achieve the level of safety and order desired by the community.¹²⁰ Kelling and Wilson further stated that “rights,” such as human rights, “were something enjoyed by decent folk, and perhaps also by the serious professional criminal, who avoided violence and could afford a lawyer.”¹²¹ In short, the Broken Windows theory effectively throws any recognition or respect for human rights out the window.

In 1975, policing practices shifted away from the order maintenance function and focused on a more “one-size-fits-all strategy,” or as Lawrence Sherman described it, the “three Rs”: random patrol, rapid response, and reactive investigations.¹²² The original model of policing was based on a theory of deterrence, but when the three-digit emergency phone numbers (911) were established, a new theory emerged: one of distinction between reactive and proactive actions taken by police.¹²³ The main approach to policing was “to arrive, do something, and leave as quickly as possible.”¹²⁴ Rather than being proactive under the order maintenance approach, policing shifted to a more reactive approach by responding to emergencies as called.

114. Sekhon, *supra* note 21, at 1717.

115. Kelling & Wilson, *supra* note 113.

116. Sekhon, *supra* note 21, at 1717.

117. Kelling & Wilson, *supra* note 113.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Lawrence W. Sherman, *The Rise of Evidence-Based Policing: Targeting, Testing and Tracking*, 42 CRIME & JUST. 377, 378 (2013).

123. *Id.*

124. *Id.*

The policing practices also began to establish a tradition of policing in America characterized as a “catchall tradition.”¹²⁵ The police, as public servants dispatched in emergency situations, were (and still are) the first to respond to a variety of social problems, whether these problems are criminal law violations or not.¹²⁶ The issue with this style of policing is that officers in America while responding to social issues like welfare checks, domestic violence, and preparing an accident report, are also legally authorized to kill.¹²⁷ This “catchall” tradition of policing also has a history of exacerbating social and racial issues in the United States. By 2012, the more random “three Rs” approach was replaced with a theory identified as the “triple-T” approach of “targeting, testing, and tracking.” Many police forces have also reintroduced community beat policing, which puts more police officers walking the streets looking to maintain order.

Another facet of the history of law enforcement in the United States is inextricably linked to racial segregation and poverty levels.¹²⁸ Segregation in America obscures the fact that people across racial groups want the same services from police, but systemic racism has given “police departments a justification for taking radically different approaches to the treatment of human life based on the intersection of race, class, and space.”¹²⁹ It would be remiss to discuss policing in the United States and police use of force without discussing the role of race in policing. One of the significant issues of the use of force is police brutality towards people of color. However, it is nearly impossible to determine the extent of whether the use of force is disproportionately used in excess against people of color because there is no national method of reporting officer use of force.¹³⁰ As the U.S. Commission on Civil Rights reported from former FBI director James Comey, “Demographic data regarding officer-involved shootings is not consistently reported to [the F.B.I.]”¹³¹ This is in large part because reporting such data is voluntary.¹³²

B. The General Legal Framework for the Use of Force by United States Law Enforcement

It can be challenging to establish one legal framework for the use of force by law enforcement in the United States because there is not a national police force. Each law enforcement agency whether a state, county or city police force

125. Sekhon, *supra* note 21, at 1718; *see also* Bell, *supra* note 22, at 655-56.

126. Sekhon, *supra* note 21, at 117-18.

127. *Id.* at 1718.

128. Bell, *supra* note 22, at 687-88.

129. *Id.* at 732-33.

130. U.S. COMM’N ON CIVIL RIGHTS, POLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES, BRIEFING REPORT (2018), <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf> [<https://perma.cc/GVJ7-UJRD>] [hereinafter *Briefing Report*].

131. *Id.*

132. *Id.*

establishes and implements its own general orders or policies governing law enforcement officers. However, the Supreme Court of the United States has ruled on various practices regarding the use of force by law enforcement officers. These rulings provide an overarching and general standard establishing the legal parameters of the use of force by law enforcement in the United States. Three primary decisions of the Court regarding the use of force are further discussed in this section.¹³³ As the decisions demonstrate, there is not a “bright line” rule as to use of force policies in the United States. Police officers are given a wide range of discretion as to the use of force against civilians, so long as the use of force is “reasonable.”

Beginning with *Tennessee v. Garner*, in 1985, the Court held that deadly force to prevent the escape of an apparently unarmed suspected felon “may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”¹³⁴ In *Garner*, officers arrived at a scene and observed a fleeing suspect, saw no sign of a weapon, and although the officers were not certain, they were “reasonably sure” the suspect was not armed.¹³⁵ To prevent the suspect from evading capture, an officer fired his weapon at the suspect’s back, ultimately killing the suspect.¹³⁶ The Court reasoned that the “use of deadly force to prevent the escape of all felony suspects, whatever the circumstances is constitutionally unreasonable.”¹³⁷ However, the Court further held that if an officer “has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”¹³⁸

Following, and applying, *Tennessee v. Garner* was the Court’s decision in *Graham v. Conner* in 1989. The Supreme Court held that “all claims that law enforcement officers have used excessive force—deadly or not—in the court of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach.”¹³⁹ In this case, the suspect was a diabetic experiencing an insulin reaction while riding as a passenger in a friend’s car.¹⁴⁰ An officer observed the suspect’s behavior and found it suspicious, so the officer stopped the suspect.¹⁴¹ While waiting for the officer to investigate further, the suspect passed out from his ongoing insulin reaction. Officers assumed the

133. There are many Supreme Court cases addressing the issue of the use of force, but the cases discussed in this Note are intended to provide an overview of the guidelines established by the Supreme Court for the use of force by law enforcement.

134. *Tenn. v. Garner*, 471 U.S. 1, 3 (1985).

135. *Id.*

136. *Id.* at 4.

137. *Id.* at 11.

138. *Id.*

139. *Graham v. Conner*, 490 U.S. 386, 395 (1989) (emphasis original).

140. *Id.* at 388.

141. *Id.* at 389.

suspect was drunk, so the officers arrested the suspect and when the suspect tried to explain his diabetic situation, the officers told the suspect to “shut up” and shoved his face against the patrol car.¹⁴²

The Court did not explicitly hold that the force used against Graham was excessive or unreasonable, and instead remanded the case to the lower court for reconsideration.¹⁴³ The Court did hold that the standard with respect to an excessive use of force claim is a standard of reasonableness.¹⁴⁴ In applying this “reasonableness” standard, the Court identified the issue regarding the use of force by law enforcement as “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”¹⁴⁵ The decision in *Graham* made clear that the use of force by law enforcement in the United States would be determined on a case-by-case basis and in accordance with the rule of whether the force was reasonable.

The Court also made clear that the officer’s intentions or motivations would not be considered in regard to applying the “reasonableness” standard to the use of force. The decision in *Graham v. Connor* failed to take into consideration the underlying biases and prejudices many officers have, specifically regarding minorities. The general principles for the use of force by law enforcement in the United States have no regard for the right to life, or any other human right for that matter because the federal principles promote a reasonable-based approach rather than a human rights-based approach. But what is “reasonable,” and is it really “reasonable” for an officer to use excessive force against an individual who appears “objectively” dangerous, or “objectively” suspicious, even though the officers’ underlying intent for using excessive force could be because the suspect was black?

In 2007, the Court was asked to apply the reasoning of *Garner* in *Scott v. Harris*.¹⁴⁶ In *Scott*, the Court narrowly held that “[a] police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.”¹⁴⁷ In a high-speed car chase, an officer “applied his push bumper to the rear of the [driver’s] vehicle” which caused the car to crash, thus stopping the chase.¹⁴⁸ The driver was seriously injured and rendered a quadriplegic.¹⁴⁹ The driver sued the officer who initiated the crash.

To determine whether the officer could be held liable, or was instead

142. *Id.*

143. *Id.* at 398.

144. *Id.* at 396.

145. *Id.* at 397.

146. *Scott v. Harris*, 550 U.S. 372 (2007).

147. *Id.* at 386.

148. *Id.* at 375.

149. *Id.*

protected by qualified immunity, the Court addressed the issue of whether the police officer's actions were "objectively reasonable."¹⁵⁰ The Court held that the "objective reasonableness" standard is the primary method of analysis for a claim of excessive force.¹⁵¹ In response to the application of *Garner*, the Court reasoned that "*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute 'deadly force.'"¹⁵² Most revealing, the Court's approach to the use of force is that "[a]lthough respondent's attempt to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slosh our way through the fact bound morass of 'reasonableness.'"¹⁵³ Thus, the Supreme Court has committed itself to not establishing a bright-line rule regarding the use of force by law enforcement, and instead uses a case-by-case approach applying the "reasonable" test.

From this canon of Supreme Court decisions, it is clear that the use of force policies in the United States, although supposedly objective in terms of what is "reasonable," may actually be quite subjective, depending on a specific officer's discretion at the time and the facts of the situation. There is no bright-line rule or consistent approach to the use of force other than the vague and ominous requirement of "reasonableness." Most concerning about these general principles guiding the use of force by law enforcement is the lack of awareness regarding the subjectivity inherent to using a discretionary standard. Supreme Court Justice Stevens has stated, "[e]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of that officer."¹⁵⁴ Evenhanded law enforcement is the goal. Yet, the objective standards applied to use of force policies are not actually objective. The "reasonableness" standard does in fact depend upon the individual state of mind of an officer as to when and how that individual officer decides to use force.

C. Law Enforcement Use of Force in the States Themselves

The explicit language of use of force policies in the governing documents for the police force in specific states will also be discussed in this section. The first example is the Indianapolis Metropolitan Police Department, which recently updated its use of force policy in August 2020. The second example is Cleveland, Ohio, which has been found to have a pattern of excessive use of force.¹⁵⁵

150. *Id.* at 381.

151. *Id.*

152. *Id.* at 382.

153. *Id.* at 383.

154. *Horton v. California*, 496 U.S. 128, 138 (1990) (holding that while inadvertence is a characteristic of most legitimate "plain view" seizures, it is not a necessary condition.) Justice Stevens recognized that objective standards provide more evenhanded law enforcement compared to standards that depend on the state of mind of the officer.

155. Press Release, The Dep't of Justice, Justice Department Reaches Agreement with City

The first state law enforcement agency this Note will discuss is the Indianapolis Metropolitan Police Department (IMPD) of Indiana. IMPD is a mid-sized law enforcement agency with 1,700 sworn officers and 250 civilian employees.¹⁵⁶ IMPD provides police services to all of Marion County, which consists of around 950,000 people.¹⁵⁷ This Note focuses on IMPD because the law enforcement agency recently revised its use of force policy, so the policy is considerably recent and up to date. It provides a real-time reflection of a specific state's use of force policy in the United States.

The General Orders of the Indianapolis Metropolitan Police Department are the “written directives” that IMPD uses to perform its job.¹⁵⁸ The General Orders cover every aspect of policing practices in Indianapolis, including the use of force. General Order 1.30 covers the use of force policy and was revised and made effective August 3, 2020.¹⁵⁹ The principle provides that IMPD officers “will uphold the United States Constitution, federal law, Indiana state law, and department policy while fulfilling their duty to protect human life, maintain civil order, and protect property.”¹⁶⁰ These are the guiding and primary principles at the core of IMPD's use of force policies. The first directive of the use of force policy requires officers to attempt to de-escalate situations and avoid using force when feasible.¹⁶¹ If it is not feasible to avoid using force, then the officers are permitted to use force only if it is “objectively reasonable and proportionate to the circumstances.”¹⁶²

As to deadly force, the General Orders provide that deadly force is prohibited, except it may be justified “when the officer reasonably believes, based on the totality of the circumstances, that such a force is necessary” either to prevent or defend against a threat of death or serious bodily injury or to apprehend a fleeing person for a felony which could result in death or serious bodily injury.¹⁶³ The use of deadly force is wholly dependent on what the officer “reasonably believes” as

of Cleveland to Reform Cleveland Division of Police Following the Finding of a Pattern or Practice of Excessive Force (May 26, 2015) <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-cleveland-reform-cleveland-division-police#:~:text=The%20United%20States%20Department%20of,violation%20of%20the%20Fourth%20Amendment> [<https://perma.cc/A6M5-57JF>].

156. *Indianapolis Metropolitan Police Department*, INDY.GOV, <https://www.indy.gov/agency/indianapolis-metropolitan-police-department> [<https://perma.cc/5PRS-QMF8>].

157. *Id.*; see also *Marion County, Indiana*, U.S.CENSUS BUREAU (2019), <https://www.census.gov/quickfacts/marioncountyindiana> [<https://perma.cc/QXX2-AFWE>].

158. Indianapolis Metropolitan Police Department, *General Orders* (July 31, 2019), <https://citybase-cms-prod.s3.amazonaws.com/ed51897f793b487186b053da8491a232.pdf> [<https://perma.cc/JVL4-ZJM8>].

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

the situation or encounter is unfolding.¹⁶⁴ Additionally, the level of force officers are permitted to use is the force that is “necessary.”¹⁶⁵ However, the General Orders do not provide further explanation of what necessary force might constitute, or what types of beliefs would be considered reasonable.

In contrast, the police department in Cleveland, Ohio, the Cleveland Division of Police, last revised its General Orders in 2015, but their specific use of force policy was last revised in August 2014.¹⁶⁶ The Cleveland Division of Police (CDP) consists of around 1,600 officers and is the second-largest police force in the state of Ohio.¹⁶⁷ The CDP prioritizes public safety in Cleveland, which consists of around 380,000 people.¹⁶⁸ This example from the state of Ohio provides a representation of a less recent use of force policy that has yet to be revised. The different orders between IMPD and CDP also demonstrate the level of variation in the use of force policies and law enforcement agencies in the United States.

Section 2.1 of the General Orders of CDP sets out the use of force policy. Cleveland’s policy provides “[a] respect for human life shall guide members in the use of force.”¹⁶⁹ Furthermore, officers “shall use only the force that is objectively reasonable to effectively bring an incident under control. . .”¹⁷⁰ The policy provides in bold font “excessive force is strictly prohibited” and “deadly force is never justified solely to protect property.”¹⁷¹ For Cleveland police, decisions of whether to use force should be influenced by “the actions of the resistant or combative person, *Division policy, proper tactics, and training.*”¹⁷²

III. ANALYSIS

While Ireland and the United States have many differences, the two countries are comparable in terms of law enforcement use of force policies and efforts to reform those policies. This part of the Note will discuss how Ireland and the United States compare in terms of law enforcement use of force policies and practices.

164. *Id.*

165. *Id.*

166. Cleveland Division of Police, *General Police Order, Section 2.1: Use of Force* (Aug. 8, 2014), https://clevelandohio.gov/sites/default/files/forms_publications/GPO_Book11-24-15.pdf [<https://perma.cc/VGL3-4NBA>] [hereinafter *Cleveland Use of Force Policy*].

167. *About the Cleveland Police*, CITY OF CLEVELAND OHIO, http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/About_Cleveland_Police [<https://perma.cc/RT7H-7QMN>].

168. *Cleveland City, Ohio*, U.S. CENSUS BUREAU (2019), <https://www.census.gov/quickfacts/clevelandcityohio> [<https://perma.cc/NAF5-BGJU>].

169. *Cleveland Use of Force Policy*, *supra* note 166.

170. *Id.*

171. *Id.*

172. *Id.*

A. Characterizing the Use of Force

In the United States, the use of force by law enforcement includes less lethal and lethal means of force. Officers in the United States are permitted to use firearms, chokeholds, and other methods of lethal force. This use of force, whether deadly or not, must be used “reasonably” and to the extent “necessary.”¹⁷³ In general, the United States approaches the use of force as one of the “traditional crime control policies that use deterrent threat and increasing severity of sanctions to gain compliance from potential lawbreakers.”¹⁷⁴ In other words, previous situations where force was used serve to deter others from engaging in behavior that could warrant such use of force from an officer. The use of force when used also increases during a given encounter with law enforcement to force compliance from the suspected lawbreaker.

Additionally, the use of force by law enforcement in the United States cannot be adequately assessed without discussing race. According to the U.S. Commission on Civil Rights, “[r]epeated and highly publicized incidents of police use of force against persons of color . . . foster a perception that police use of force in communities of color and the disability community is unchecked, unlawful, and unsafe.”¹⁷⁵ In March of 1991 in Los Angeles, California, police officers were recorded kicking, beating and assaulting a black man, Rodney King, who was on parole for robbery and stopped for driving while under the influence.¹⁷⁶ In 1997, while standing on the stoop of his apartment building, Amadou Diallo, a black man as well, was approached by four police officers in plain clothes.¹⁷⁷ The officers discharged 41 shots at Diallo as he retreated into the apartment hall, being shot a total of 19 times.¹⁷⁸ In 2014, Michael Brown, a black teenage boy, was stopped by a police officer for stealing some cigarillos and was shot by the police officer when a chase ensued.¹⁷⁹ In 2020, George Floyd, also

173. See *infra* Part II, Section B.

174. Walter Katz, *Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force*, 128 HARV. L. REV. F. 235 (2015).

175. Briefing Report, *supra* note 130.

176. Karen Grigsby Bates & Anjali Sastry, *When LA Erupted in Anger: A Look Back at the Rodney King Riots*, NAT’L PUB. RADIO (Apr. 26, 2017), <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots> [<https://perma.cc/J576-Y6WV>].

177. Jane Fritsch, *The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting are Acquitted of All Charges*, N. Y. TIMES (Feb. 26, 2000), <https://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html> [<https://perma.cc/LK3N-G6LQ>].

178. *Id.*

179. Larry Buchanan et. al, *Q&A What Happened in Ferguson?*, N. Y. TIMES (Aug. 10, 2015), <https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html> [<https://perma.cc/9YQ2-DKFC>].

black, was suspected of using a counterfeit bill at a store.¹⁸⁰ When stopped by law enforcement and handcuffed, an officer placed his knee on Floyd's neck for almost nine minutes, resulting in Floyd's death.¹⁸¹

While these accounts fall short of an exhaustive representation of the use of force by law enforcement in the United States, they are representative of the perceived culture of modern policing. While the United States Supreme Court has yet to revisit the "reasonable" standard for the use of force by law enforcement, the Fourth Circuit has. In the *Estate of Jones v. Martinsburg*, a black man experiencing homelessness died while in the custody of five law enforcement officers in 2013. The Fourth Circuit did not decide the case until 2020. The issue was "whether the five officers who shot and killed Jones as he lay on the ground [were] protected by qualified immunity."¹⁸² The court concluded the officers were not protected by qualified immunity and could be held liable for their excessive use of force.¹⁸³

In the final section of the opinion, the Fourth Circuit provided a cultural context concurrent with their decision. Jones' death in 2013 occurred one year before the Ferguson, Missouri shooting of Michael Brown.¹⁸⁴ Given this context, the court stated, "Seven years later [from Jones' death], we are asked to decide whether it was clearly established that five officers could not shoot a man 22 times as he lay motionless on the ground."¹⁸⁵ While the court understood police officers are required to make split-second decisions while on the job, the court stated it "expect[s] them to do so with respect for the dignity and worth of black lives."¹⁸⁶ This decision was published in June 2020, around the time the FBI opened an investigation into the death of George Floyd, which involved "another death of a black man at the hands of police."¹⁸⁷ Unfortunately, a decision like this, with language directly stating officers are expected to do their job with respect for the dignity and worth of human life, is not the supreme law of the land. Even more unfortunate, the current legal framework and cultural approach to the use of force in the United States leaves too many men, and particularly men of color, dead in the hands of people intended to protect the community, but who are also authorized to kill.

After the death of George Floyd in 2020, the officer who restrained Floyd by kneeling on Floyd's neck was charged with second-degree murder, third-degree murder, and second-degree manslaughter in Minnesota state court.¹⁸⁸ In April of

180. *George Floyd, What Happened in the Final Moments of His Life*, BBC NEWS (July 16, 2020), <https://www.bbc.com/news/world-us-canada-52861726> [<https://perma.cc/N9FV-D742>].

181. *Id.*

182. *Estate of Jones v. City of Martinsburg*, 961 F.3d 661, 667 (4th Cir. 2020).

183. *Id.* at 668.

184. *Id.* at 673.

185. *Id.*

186. *Id.*

187. *Id.*

188. Laurel Wamsley, *Derek Chauvin Found Guilty of George Floyd's Murder*, NPR (Apr. 20, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/>

2021, the officer, Derek Chauvin was found guilty by a jury on all counts.¹⁸⁹ While this single case offers a flicker of hope as to the public's changing perception, or even the beginning of a shift in the cultural approach to the use of force, George Floyd remains dead. The purpose of the reform suggested in this Note is to move to a proactive approach to the use of force in the United States, rather than a reactive punitive approach. Convicting the officer who killed George Floyd does not change the fact that George Floyd was killed. Thus, the reform suggested in this Note remains necessary, because the purpose of the suggested reform is to focus on *preventing* deaths like that of George Floyd.

In Ireland, the use of force largely consists of less-lethal force, and it is unclear whether officers are permitted to use deadly force.¹⁹⁰ The use of force by members of the Garda is best characterized by the use of incapacitant spray or pepper spray. Gardaí are unarmed while on patrol, and most are not even trained in how to use firearms.¹⁹¹ Only 20-25% of members of the Garda are trained in how to use firearms.¹⁹² Otherwise, the Gardaí in Ireland resort to pepper spray as a means of using force. This differs greatly from the characterization of the use of force in the United States, where most law enforcement officials carry firearms, as well as pepper spray and TASER. Additionally, while law enforcement officers in the United States are permitted to kill under deadly force policies, members of the Garda do not have the same authorization to use deadly force. However, using the force that is available to Gardaí appears to also be overused or excessive. In the report published by the Irish Council for Civil Liberties, Kilpatrick found that members of the Garda use pepper spray twice as much as neighboring forces such as the Metropolitan Police Service in London.¹⁹³

Thus, the use of pepper spray in Ireland is regarded as a serious use of force that must be regulated with a high level of accountability for Garda members.¹⁹⁴ Beginning in 2020, members of the Garda must record their use of pepper spray and account for each incident explaining why pepper spray was used.¹⁹⁵ Failure

987777911/court-says-jury-has-reached-verdict-in-derek-chauvins-murder-trial [https://perma.cc/U2PP-VVC2].

189. *Id.*

190. It is unclear because the overarching use of force policy is not public.

191. Rick Noack, *5 Countries Where Most Police Officers Do Not Carry Firearms – and it Works Well*, THE WASH. POST, (July 8, 2016, 2:15 PM), <https://www.washingtonpost.com/news/worldviews/wp/2015/02/18/5-countries-where-police-officers-do-not-carry-firearms-and-it-works-well/> [https://perma.cc/9ZC2-7BQX].

192. *Id.*; see also Amelia Cheatham & Lindsay Maizland, *How Police Compare in Different Democracies*, COUNCIL ON FOREIGN RELATIONS (July 30, 2020) <https://www.cfr.org/background/understanding-how-police-compare-different-democracies>, [https://perma.cc/DWY3-9DEY].

193. KILPATRICK, *supra* note 23, at 63.

194. Connor Lally, *Gardaí's "Use of Force" with Pepper Spray to be Strictly Monitored*, THE IRISH TIMES, (Mar. 7, 2020), <https://www.irishtimes.com/news/crime-and-law/garda%C3%AD-s-use-of-force-with-pepper-spray-to-be-strictly-monitored-1.4195575> [https://perma.cc/NA5L-JVJE].

195. *Id.*

to comply with recording and accounting for this use of force could result in discipline for Garda members.¹⁹⁶ Accountability measures for the use of force such as these in Ireland vary in their implementation in the United States. For example, IMPD used to require officers to provide a report for when a firearm was discharged, but not for other uses of force.¹⁹⁷ As IMPD has implemented reform measures, officers are now required to provide a report of all uses of force, whether lethal or less lethal.¹⁹⁸

Another key difference in Ireland regarding the use of force by law enforcement is that policing practices are less fraught with racial tension. While Ireland has a history of tension with Northern Ireland, and that does not diminish the issue of bias or prejudice in policing practices, the conclusion can still be drawn that policing in Ireland is less “black and white” than in the United States. This notion is further supported by the lack of a discussion on race or inequity in the use of force by members of the Garda in the report on the need to reform the Garda published by the Irish Council for Civil Liberties.¹⁹⁹

The type of force available for officers to use to exercise force is also a defining feature of how the use of force is characterized in Ireland and the United States. In Ireland, only special units are permitted to use firearms and are equipped with TASER.²⁰⁰ However, all Gardaí carry pepper spray and batons.²⁰¹ In comparison, law enforcement in the United States can carry firearms, batons, pepper spray, TASER, and other weapons. Another notable feature of the types of force available to officers in the United States is the use of demilitarized weapons and equipment from the federal government. Known as the 1033 Program, law enforcement agencies across the United States can apply for decommissioned military-grade equipment ranging from office materials such as desks to tanks formerly used by troops in Afghanistan.²⁰²

B. The Approach to the Use of Force

When it comes to any policing practice, including the use of force, officers in Ireland are now directed to the Garda Decision Making Model. This Model serves as a uniform and clear rule for guiding law enforcement officers on how to conduct their job. At the center of the model is constitutional and human rights,

196. *Id.*

197. Amelia Pak-Harvey, *New Indianapolis Police Use of Force Review Board Now Has More Civilians than Officers*, THE INDYSTAR, (October 30, 2020), <https://www.indystar.com/story/news/local/marion-county/2020/10/30/impd-use-force-review-board-has-more-civilians-than-officers/6089321002/> [<https://perma.cc/6VYD-FAHF>].

198. *Id.*

199. KILPATRICK, *supra* note 23, at 63.

200. *Id.*

201. *Id.*

202. *1033 Program FAQs*, DEFENSE LOGISTICS AGENCY, [https://www.dla.mil/Disposition Services/Offers/Reutilization/LawEnforcement/ProgramFAQs.aspx](https://www.dla.mil/Disposition%20Services/Offers/Reutilization/LawEnforcement/ProgramFAQs.aspx) [<https://perma.cc/7RE7-RMP2>].

as well as the Garda Code of Ethics. Putting these principles at the center of the Model demonstrates how the approach to policing practices in Ireland should be primarily influenced by a constitutional and human rights approach. But this approach and model were not established until recommended by the Irish Council for Civil Liberties. In response to the Council's findings and recommendations, the Garda Síochána ushered in a new wave of reform for the police force.²⁰³ The policy in Ireland regarding law enforcement use of force provides Gardaí "will only resort to the use of force if there is no realistic prospect of achieving the lawful objective without exposing members of An Garda Síochána or any whom it might be their duty to protect, to a real risk of harm of injury."²⁰⁴ The ECHR also establishes the standard for use of force only when "strictly necessary."²⁰⁵

In contrast, the United States does not have a clear model for policing practices, especially for use of force policies. The federal, and most centralized, approach to law enforcement use of force is defined by the "objective reasonableness" standard at the core for deciding when and how law enforcement are permitted to use force.²⁰⁶ This approach leads to confusion and inconsistent case-by-case application of the principles for use of force. This is evident in the use of force orders for IMPD and CPD. Both IMPD's and CPD's standards appear similar by requiring the "objective reasonableness" standard for use of force.²⁰⁷ The agencies diverge though because IMPD use of force policy requires officers to adhere to the United States Constitution, whereas CPD use of force policy does not include any reference to Constitutional standards for influencing when and how to use force.²⁰⁸ Thus, when officers in the United States are faced with a split-second decision their only guiding principle is to act reasonably. Under the "objective reasonable" standard it is more likely that use of force will be used in excess or be abused by law enforcement officers responding to situations in fear and for their own safety. This forces the question to be asked: How many more times will excessive force be used resulting in the death of a suspect while in police custody?

Furthermore, the United States appears to be similarly situated as Ireland with the need to reform. In 2018, the U.S. Commission for Civil Rights published a briefing for the White House on police use of force.²⁰⁹ A key recommendation of the approach was that the Department of Justice needed to renew its

203. KILPATRICK, *supra* note 23, at 112-22.

204. Incapacitant Spray Policy, *supra* note 109.

205. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS No.005.

206. *Scott v. Harris*, 550 U.S. 372 (2007).

207. *See General Orders, General Order 1.30*, Indianapolis Metro. Police Dep't (Oct. 27, 2015), <https://citybase-cms-prod.s3.amazonaws.com/ed51897f793b487186b053da8491a232.pdf> [<https://perma.cc/JVL4-ZJM8>]; and Cleveland Use of Force Policy *supra* note 166.

208. *Id.*

209. Briefing Report, *supra* note 130.

commitment to enforcing constitutional policing.²¹⁰ The second key finding was Congress should fund more grants to promote more training programs on de-escalation and alternatives to the use of force.²¹¹ Just as the Irish Council for Civil Liberties made key findings as to how the Garda should reform, the U.S. Commission for Civil Rights has also conducted extensive research on how and why law enforcement in the United States should be reformed. Yet the approaches to reform differ because the United States' approach to the use of force was classified by the Civil Rights Commission as a need for a constitutional approach, while Ireland implemented a human rights approach.

Another significant difference between Ireland and the United States is the influences on the approach to the use of force. One inevitable influencer is history. While Ireland and the United States share distinct histories of power struggles and racial tension, both are influenced by the past. In contrast, though, Ireland appears to have reacted to its past by turning away from the violence and bloodshed that spreads across its history by avoiding violence in policing with a human rights-based approach to policing. Whereas the United States appears to still be learning from its past, and sometimes even repeating it.²¹²

International law is also influencing the use of force approach in Ireland, but not in the United States. For instance, Ireland's legal framework for the use of force is directly influenced by obligations under international law, as well as its membership in the European Union. The Garda Decision Making Model is also influenced by the obligations set forth by various international human rights instruments.²¹³ In contrast, the United States is not as influenced by international law or regional standards. Rather, the approach to the use of force in the United States is defined wholly by domestic standards, beginning at the federal level, then the state level and ending at the municipal level. This difference in domestic and international influences contributes to the difference between Ireland's human rights-based approach and the United States' crime control approach.

One of the most distinctive approaches to the use of force policies in the United States and Ireland is the approach to reforming these use of force policies. Ireland and the United States are similar in that their law enforcement agencies have received stark criticism over alleged abuses of power, failure to provide adequate accountability for law enforcement actions, and excessive use of force, whether lethal (as in the United States) or less-lethal (as in Ireland). The difference though is the path of reformation in response to the criticism of the use of force policies.

In Ireland, the Irish Council for Civil Liberties published an extensive report discussing the issues with policing in Ireland, and how those issues can be resolved by implementing a human rights-based approach to policing informed by a model used in another country.²¹⁴ In response to this report, the Garda

210. *Id.*

211. *Id.*

212. *Id.*

213. *See infra* Part I, Section C.

214. Briefing Report, *supra* note 130.

Síochána listened, essentially indicating that the Irish Council for Civil Liberties report had a resounding effect. The main finding of the report was that the policing culture of the Garda Síochána would benefit from a mind reset of policing practices by approaching every aspect of policing by seeing a suspect for what they are: a human, with a right to life and constitutionally protected freedoms.²¹⁵ The Garda has demonstrated a willingness to begin this path to reform, by establishing the Garda Decision Making Model, a human rights strategy, and learning from the Northern Ireland model.²¹⁶

In contrast, the United States seems lost as to how to effectively reform the use of force policies in the United States. There have been many suggested, and failed, attempts to reform law enforcement in the United States, from order maintenance and community beat policing to a more reactive and “showing up when needed” approach.²¹⁷ Other reform efforts have suggested law enforcement carrying fewer weapons, changing how law enforcement is trained, and adding additional accountability measures. The latest suggestion for reform in response to the excessive use of force that sparked Black Lives Matter protests in the summer of 2020 has been to defund the police.²¹⁸ There have been efforts to revise the use of force policies found in the general orders of various law enforcement agencies across the United States, but this varies from state to state. Some agencies, such as IMPD, have revised their use of force policies, whereas some agencies have not, such as CDP.²¹⁹ For there to be effective reform of the use of force policies by law enforcement in the United States, a new approach is needed. More specifically, a human rights-based approach is needed.

IV. RECOMMENDATION

The time is now for law enforcement use of force policies and practices in the United States to undergo significant and effective reform. To do so, the United States should look to Ireland’s human rights policing approach as a model. In Ireland, “[a] human rights-based approach puts the rights of individuals and protected groups, enshrined at law by the ECHR, at the centre of every decision and action of the Garda Síochána and gardaí.”²²⁰ A human rights-based approach in the United States would put the rights of all individuals, including minorities, enshrined in the Constitution and Bill of Rights at the center of every decision and action of law enforcement to use force.

215. KILPATRICK, *supra* note 23, at 112-22.

216. *See generally* Garda Decision Making Model, *supra* note 24; *see also* KILPATRICK, *supra* note 23, at 112-22.

217. *See infra* Part II, Section A.

218. Scottie Andrew, *There’s a Growing Call to Defund the Police. Here’s What it Means*, CNN (June 17, 2020, 10:32 AM), <https://www.cnn.com/2020/06/06/us/what-is-defund-police-trnd/index.html> [<https://perma.cc/K8P6-KCQJ>].

219. *See infra* Part II, Section C.

220. KILPATRICK, *supra* note 23, at 8.

To implement a human rights-based approach, the United States should establish a decision-making model with human and constitutional rights at the core of the model. Ireland's Garda Síochána provides a strong example of a plausible path to reformation of law enforcement, from criticism of unchecked use of force to putting human and constitutional rights at the core of policing practices.²²¹ A human rights-based approach will require that "[e]very policy, training exercise and operational application of powers and duties begin[] with a consideration of the rights at issue."²²² This is why a decision-making model is crucial to the path to reform: it can ensure the application of a human rights-based approach. Ireland is still on this path of reformation so while it cannot yet be concluded how effective the approach will be, it can be said that Ireland undertook a significant reformation effort directly in response to the Garda's faults.²²³ The United States must do the same to address the crisis of policing and the use of force.

Ireland's law enforcement was facing increasing criticism against their then policies and practices, particularly with the use of force.²²⁴ The United States' law enforcement agencies face similar criticism with the current policing style and use of force.²²⁵ Ireland's method of reform is a strong model not only because it was influenced by the legal standards of Ireland's constitutional rights, but the fundamental idea that if police are protecting humans, they must also inevitably protect a human's fundamental right to life, guaranteed by the constitution.

A cornerstone of democracy in the United States is the long-held notion that an individual is innocent until proven guilty.²²⁶ This notion has depreciated though by the presumption that an individual's race or socioeconomic status determines their innocence or guilt, rather than evidence and law. The use of force by law enforcement in the United States must be reformed to recognize human rights, because when a suspect dies in the hands of the police, the very officers who swore to protect the people, the suspect is denied every opportunity the U.S. Constitution and Bill of Rights were intended to protect.

A suspect is called a "suspect" because at the time police apprehend said suspect it is unclear whether the individual is innocent or guilty. Excessive use of force by law enforcement, especially deadly force, when abused, denies a suspect their guaranteed day in court when they will be judged by a jury of their peers rather than by the apprehending officer.²²⁷ It is not a law enforcement

221. Garda Decision Making Model, *supra* note 24.

222. KILPATRICK, *supra* note 23, at 8.

223. *See infra* Part I, Section B.

224. KILPATRICK, *supra* note 23, at 112-22.

225. Briefing Report, *supra* note 130.

226. U.S. CONST. amend. XI.

227. This is not to say that the use of force may never be applied by law enforcement. However, the use of *excessive* force, applied unreasonably, should not be a tool that law enforcement can use. The line for when the use of force may or may not be appropriate should be determined by a human rights-based approach to afford the utmost respect for an individual's life and constitutional rights.

officer's job to decide whether an individual is guilty or innocent. That is the role of a jury. But a suspect cannot exercise constitutional rights if an officer uses what they believe to be reasonable excessive use of force. Look no further than Wayne Jones.²²⁸ Jones was killed by five police officers after a stop stemming from him not walking on the sidewalk.²²⁹ He had no opportunity to provide a defense, no opportunity to have his case heard, and no opportunity to put his humanity on display for the suspected crime he committed.²³⁰ This is why the use of force by law enforcement in the United States must be reformed using a human rights-based approach.

While the courts in the United States are beginning to take a closer look at the use of force by law enforcement, the judicial system is too slow and frankly, ill-equipped to appropriately provide an effective means of reform.²³¹ Furthermore, although the U.S. Commission on Civil Rights recommended that Congress fund more grants to provide training to law enforcement for de-escalation tactics and alternatives to the use of force, these methods are not enough, nor will they likely prove effective.²³² Ireland has shown that even when less-lethal force is the primary means of using force, there can still be issues of excessive use and abuse of force.²³³ It is arguably more essential that the United States use a human rights-based approach to the use of force because officers are permitted to carry firearms and additional weapons. As Kilpatrick, of the Irish Council for Civil Liberties, recognized, changing the language of policies, and providing different training do not go far enough compared to implementing a practical approach to provide human rights-based policing.²³⁴ Human rights-based policing requires resetting the minds, expectations and approaches of law enforcement officers.²³⁵

However, another key finding from the U.S. Commission on Civil Rights is that constitutional policing needs to be better enforced.²³⁶ "Constitutional policing" is a starting point that could be aligned with "human rights policing" as the methods seek to ensure policing is delivered in a manner consistent with the rights afforded to individuals. A human rights-based approach to policing will not solve every issue or criticism of law enforcement in the United States though, and the approach will not bring change overnight. Nevertheless, it is an approach that provides the potential for more meaningful and effective reform. A human rights-based approach to the use of force by law enforcement in the United States

228. See *Estate of Jones v. City of Martinsburg*, 961 F.3d 661 (4th Cir. 2020).

229. *Id.* at 663.

230. *Id.*

231. *Id.* at 663-64. While the Fourth Circuit notably condemned the behavior of the officers who killed Jones, the case was decided in 2020, but the incident occurred in 2013. Additionally, this is one of few cases which speaks directly about police brutality in terms of race.

232. Briefing report, *supra* note 130.

233. Lally, *supra* note 194.

234. KILPATRICK, *supra* note 23, at 112-22.

235. *Id.*

236. Briefing Report, *supra* note 130.

will require a cultural reset, but given the state of the country, a cultural reset is arguably exactly what is needed.²³⁷ A human rights-based approach to the use of force will require an officer, before they draw their gun, before they put a suspect in a chokehold, before they discharge a TASER or pepper spray, before beating with a baton, to consider the individual's right to life, right to security of their person, right to liberty, and additional human rights. This will require law enforcement officers to be knowledgeable of the Constitution and Bill of Rights to recognize and understand these rights. It will also require law enforcement officers to better understand human rights law.

Implementing a human rights approach to the use of force will not be easy, but it can be done. Most importantly, the United States has Ireland to look to as a model. From training to accountability, to the type of force available for officers to use, a human rights approach provides a holistic method of reform to every aspect of the use of force policies and practices and all other areas of policing. Ireland has already taken these steps, from rewriting its policies to reflect the importance of human rights in policing practices, enforcing a decision-making model for how to approach every situation in policing, and establishing more oversight to ensure the new human rights approach measures are being followed.²³⁸ Now, it is the United States' turn.

The United States can follow in Ireland's footsteps to reform the use of force by law enforcement by following Ireland's implementation approach. This approach includes (1) a willingness to change by law enforcement agencies; (2) representativeness; (3) gathering expert advice; (4) developing new policy; (5) developing and delivering effective training; (6) collection and analysis of data; and (7) external monitoring/oversight and accountability measures.²³⁹ In practice, law enforcement agencies will need to take the humble step of recognizing the need to change.²⁴⁰ This step will require a cultural re-set within law enforcement agencies.²⁴¹ Representativeness of experiences involving the use of force as well as representation of diverse voices will be necessary to include in each implementation step. Expert advice should include experts on civil and human rights to inform the use of force reform as well as the development of new policy. The new policy should include a new national code of ethics, established by the Department of Justice, applied uniformly to all law enforcement agencies in the United States. The new policy should also be developed to include a nationally required decision-making model to inform the use of force. These new policies will require the development and delivery of effective training on how to use the decision-making model to put the consideration of human rights at the core of every approach to the use of force.

Information on how often use of force is applied, what types of weapons or

237. *Id.*

238. *See* Incapacitant Spray Policy, *supra* note 109; *see also* Garda Decision Making Model, *supra* note 24.

239. KILPATRICK, *supra* note 23, at 112-22.

240. *Id.*

241. *Id.*

techniques are used to apply force, and the type of situations in which use of force is applied are starting points for data collection. This information is especially necessary considering there is not a comprehensive, national reporting requirement regarding the use of force by law enforcement.²⁴² Reporting use of force metrics to the Department of Justice is currently optional.²⁴³ It should be mandatory. Oversight in the form of use of force review boards with a board consisting of community members in addition to police administration must be established to promote accountability. Finally, law enforcement agencies must continuously evolve and improve their standards to maintain a human rights-based approach to policing.

CONCLUSION

The use of force by law enforcement in the United States can no longer be defined by a “reasonable” standard. There is too great a chance the use of force will be abused and excessive, resulting in unsafe policing practices. The use of force policies need appropriate and effective reform. The police force in Ireland has faced a similar need to provide safer policing practices and use of force policies. An Garda Síochána in Ireland offers a model for the United States to follow in reforming law enforcement use of force policies. The United States should take a human rights-based approach to the use of force in policing. A decision-making model with human and constitutional rights at the core should be established and implemented for use by all law enforcement agencies across the country. What is “reasonable” is no longer enough as the standard for the use of force by law enforcement. Human rights policing and approach to the use of force should be the next method of reform the United States pursues to address the crisis in policing.

242. Briefing Report, *supra* note 130.

243. *Id.*