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‘Hot pursuit’: law enforcement practice and the public interest

Darren Palmer

A law enforcement culture underlies police policy in the area of car pursuits.

As I drafted this article at the end of November 2002 another fatality resulting from a high-speed police pursuit occurred, this time in the inner West of Sydney. As with so many of the fatal ‘hot pursuits’ it was young men in the pursued car, coming to the attention of the police for alleged traffic infringements and a belief that the car they were driving was stolen. In general this case appears to share the key features of many police pursuits resulting in deaths: suspicion without clear evidence, relatively minor offences, high-risk operations (particularly high speeds in inner urban settings), and young male drivers.

In December 2002, the Queensland Crime and Misconduct Commission recommended that two police officers involved in a pursuit that crossed into New South Wales be subject to disciplinary action. This followed a NSW Coroner’s report that was highly critical of police practice, with the NSW deputy coroner describing the case as the ‘biggest police bungle she had seen’.¹ This case and earlier research into Queensland Police pursuits has led to a full-scale review of the Queensland Police pursuit policies.² Similarly, the rise in pursuit-related fatalities in Victoria, including a triple fatality in June 2002 has prompted an internal review of their pursuit policies and a coronial review of police pursuits.³

For police too, high-speed pursuits involve a number of risks. For instance, in early 2001 a New South Wales police officer was killed when laying out road spikes in what was expected by the many police observing to be a ‘textbook operation’.. The vehicle swerved to avoid the spikes and instantly killed the police officer.⁴

Without addressing each state and territory in detail, it is fair to claim that police high speed pursuits is one of the more pressing issues of police operational practice. Furthermore, we need to examine the extent that the broader public interest in public safety and the protection of life and property is not compromised by a narrowly construed law enforcement mentality in both pursuit policy and practice. In this article, we locate some of the current concerns with police pursuits within the recent history of pursuits and current policy and practice.

Police pursuits in recent historical context

As with so many areas of police practice, discussion and analysis too easily focuses on the current case(s) to the detriment of understanding how current practices have been shaped by what has gone before. In the case of pursuits, two important historical narratives shape our understanding of contemporary policy and practice. First, there is the longstanding concern with pursuits themselves.⁵ Indeed, since the mid-1980s police pursuits have been recognised in the US as ‘the most deadly force’.⁶

The second historical narrative informing police pursuits concerns a different form of use of force — police shootings. It has been this second issue that has fuelled much of the policy review of police use of force in the 1990s (the shift between or the relative emphasis on pursuits or shootings varied across the country). From the 1990s or earlier, police use of force has been contained within a broader policy framework of minimum force and ‘safety first’. While the former principle of minimum force can be argued to have always been a key police principle, it has been expanded and refined within the framework of ‘safety first’.

Both police shootings and police pursuits resulting in death are categorised for internal purposes, and for the data collection of the Australian Institute of Criminology Deaths in Custody monitoring Unit, as ‘Use of Force Incidents’.. While there are still ‘boundary wars’ over what does or does not constitute a pursuit resulting in a death in custody — for instance whether the pursuit had been called off, or whether it was a ‘follow’ — we have more information about fatal police pursuits than previously (though clearly more analysis needs to be done). The key feature of the AIC data is the shift in the location of ‘deaths in custody’.. In the 1990s, most deaths in police custody occurred in police stations or in ‘close contact’ operations such as raids or shootings. The most recent data indicate a dramatic shift, wherein today most deaths in police custody occur through police high speed pursuits.⁷

In what appears to be the first detailed academic analysis of police pursuits in Australia, Russell Hogg drew on media accounts and a New South Wales Parliamentary Committee (Staysafe 1985) to identify three key features of pursuits:

- that policy structure and supervision are too ambiguous leaving considerable scope for the underlying ‘ethos’ or ‘police culture’ to largely determine practices;
- that the level of institutionalised accounting for pursuits was poor, uninformative, and failed to meet accountability needs; and
- that the data available suggested police are far more ‘risky’ than other emergency services, that the risk to life flowed from the pursuit rather than any other dangers presented by the fugitives, and that too often it was people uninvolved in the pursuits that died (56% in his sample).

The importance of Hogg’s work (apart from the obvious attempt to shape reforms in the 1980s) is that it provides an historical marker, located in the public domain, of the knowledge or evidence-base of police pursuits. As he suggested at the time, there is a strong presumption for conducting a pursuit rather than ‘the more pressing public interests in law enforcement’.⁸ While Hogg’s research may have lacked empirical detail because so little was available, he did attempt to draw on what data he could obtain, and highlighted police pursuits as a vital area for further policy development. Some 15 years later, we can re-visit key issues of current police pursuit policy and practice.

Policy structure and police ethos or culture(s)

Over the past decade we have benefited from more detailed research into police cultures in Australia and the recognition of the heterogenous and open-ended nature of police cultures.⁹ Janet Chan’s work is instructive for understanding recent developments in police pursuits. Chan seeks to understand policing through the interactions between the structural conditions or ‘field’ of police work and the cultural knowledge or ‘habitus’.. The former contains police policies, legal powers and constraints and other structural conditions shaping police work. Cultural knowledge refers to the perceptions, attitudes, and reasoning that police develop and maintain that helps make sense of what is or is not acceptable. To understand police practices, it is necessary to examine both the content of the field and habitus, and the interaction between the two.

In the case of police pursuits, much of the emphasis has been placed on the structural conditions, with less emphasis on cultural knowledge. Pursuit policies have been reformed, but they remain ambiguous. For instance, following the mid 1990s criticisms of the Victoria Police in terms of the ‘gap’ between the policy of minimum force and safety first, and the reality of the use of ‘high risk’ operational tactics, all police policies were reviewed to ensure they promoted safety first. The pursuit policy outlines a range of factors to be considered in the decision-making process to ensure minimum force and that the ‘mandatory operating principle is “the safety of the police, the public and offenders or suspects is paramount”’.¹⁰

The necessity of conducting a pursuit

Most pursuits begin in rather mundane circumstances such as an attempt to direct a driver to pull over for a traffic infringement. From this ordinary and everyday routine police practice, a high risk police pursuit emerges. To determine whether it is necessary to pursue, the officer has to consider whether the circumstances are ‘serious enough to justify a pursuit’, that there is more than ‘mere suspicion’ and that they believe it would be ‘unlikely’ that they could identify or apprehend those in the pursued vehicle at a later date. One of the key problems in the Victorian policy is that there is no guidance on ‘seriousness’. It is left to the police officer to determine this in what is referred to as a ‘judgemental’ process of decision making centred on officer discretion. The alternative is to have ‘restrictive’ policies that either discourage pursuits or limit them to specific circumstances.¹¹

Australian police agencies generally prefer the former approach, though some will actively seek to make police aware of the risks and dangers. For instance, Queensland Police policy begins with a warning on the dangers of pursuits, whereas Victoria Police policy contains no such warning. The key point remains that seriousness of the suspected offence is a consideration rather than determining factor, and it is left largely to the discretion of the pursuing police officer, as it is rare that a supervisor will intervene (see below). Furthermore, as indicated above, most pursuits begin with relatively

minor offences such as traffic offences or suspected stolen vehicles, rather than the ‘serious offender’.

This ‘judgemental’ policy stance is part of the structural conditions that create the deliberative space for occupational cultural knowledge that emphasises the need for law enforcement, promoting practices that increase the risks to the broader public.

A second area of considerable deliberative space concerns the futile distinction between a pursuit and a ‘follow’ or ‘disengagement’. This problem was recognised explicitly in the recent report by the Police Complaints Authority in London, which concluded that the false division made between ‘follow’ and ‘pursuit’ is unhelpful as they do not differ in behavioural practice, that pursued drivers and passengers do not see any difference in police actions, and police often retrospectively classify pursuits as ‘follows’ to avoid disciplinary action.¹²

In the Victorian policy the terminology is ‘disengagement’, which constitutes a ‘resolution tactic’ or risk reduction measure that allows the pursued vehicle to pull away but does not mean the same as abandoning a pursuit. The latter is determined by there being ‘unacceptable risk’, where the ‘risk outweighs the necessity’ and where ‘warning devices do not provide effective warning to other road users’. However, a recent Victorian case is indicative of the ambiguity of the use of disengagement or following. In this case, a police officer followed a motorcycle through residential and commercial areas with limits of 60 and 70 km/h at speeds estimated to be between 140 and 180 km/h without the use of sirens and flashing lights. He also did not have radio contact with the police control room. The motorcyclist ultimately collided with another vehicle and died. As the police officer claimed that he was not trying to actively intercept the motorcyclist, his actions were not defined as a pursuit. The Deputy Coroner indicated: ‘If this statement is accurate, it seems absurd in the extreme to be continuing at such speed’ and that he treated the account given by the police officer ‘with some scepticism’. He also criticised the adequacy of police risk assessment.¹³

Risk assessment and moral hazards

If a pursuit is seen to be necessary, the officers still have to continually consider the risks. In Victoria, this consists of considering the threat to safety of any person, the competence of the police driver, the type of police vehicle, whether the police vehicle has warning devices (markings, lights and sirens), manner and speed of pursued vehicle and whether the driver has been identified. This risk assessment must be conducted *before* the pursuit is initiated and must be constantly reassessed, despite the reality that most pursuits begin from mundane policing and end within minutes. Furthermore, the risk factors are not so clearly defined as to indicate that a pursuit cannot take place if the driver is not specially trained, or they do not have a police vehicle that has warning devices and so on.

High speed and high risk pursuits also introduce ‘moral hazards’.. A moral hazard is created when the actions of one party foster behaviour of another party in the relationship in ways that immorally increase the risk to other parties.¹⁴ In the case of police pursuits, the moral hazard occurs when police action increases the risk to other parties — drivers of pursued vehicles, their passengers (who will have varying degrees of influence on the driver), other road users, and pedestrians. The question becomes one of whether the police are acting morally when engaging in high speed pursuits, and what variables operate along a continuum from moral to immoral (though some will argue that this is really an either-or division).

Police responses to this line of reasoning have been:

- that it is the people being pursued who increase risks simply by not doing as directed by police;
- that pursuits can result in catching ‘serious offenders’;
- that it is unknown what these drivers would have done if not pursued (for instance, been involved in a fatal accident, committed other offences and so on); and
- that failure to pursue would encourage would-be criminals to try to outrun police at every opportunity.

In other words, the police believe that a severe restriction on pursuits would cause ‘deviance amplification’, more rather than less offending, and more rather than less risk. Indeed, in the recent triple fatality following a high speed

police pursuit, the Victorian Chief Commissioner Christine Nixon was reported as saying the crash was ‘a lesson about people stealing cars’ and that ‘it’s a matter of a deterrence effect that people know we will pursue them if they’re driving stolen motor vehicles or committing other serious offences’.¹⁵

If we return to the evidence, there is little to support such concerns. While it is true that many of the people being pursued have the markings of high risk road users — they are most often young men, consuming drugs and or alcohol — far more sophisticated research would be needed to even attempt to support such claims. Yes they are ‘risky’, but the outcome of alternatives to high-speed police pursuits such as non-intervention or withdrawal is unknown.

Further, pursuits rarely end with the catching of ‘serious offenders’. Most offences are traffic related and/or involve stolen vehicles. This is not to deny the impact of these offences on others, but to lay claim to the operational benefit of solving ‘serious crime’ stretches matters somewhat. In addition, we need to recall that many pursuits are unnecessary in that alternative operational procedures can be used (the suspect can often be easily identified and taken into custody at a later stage). This is something that needs to be stressed to operational police, given that many pursuits are of such brevity.

Finally, on the question of ‘deviance amplification’ the evidence supports the opposite. Results from significant policy shifts in the US indicate dramatic changes in the pursuit outcomes. Where police discretion was significantly increased, so too did the number of pursuits increase, and where pursuits were more tightly controlled, pursuits decreased significantly with a commensurate decrease in accidents and injuries and *no reported increase in crime or in offenders fleeing police*.¹⁶

In sum, the evidence suggests that curtailing police discretion to engage in a pursuit actually lessens the risks, whereas expanding police discretion to engage in pursuits increases the moral hazards of police practice by a likely increase in the use of pursuits and increases in the risk of unwanted outcomes such as accidents, injuries and death.

Accounting and accountability

There are two key aspects to accountability for pursuits:

- the internal mechanisms to ensure professional behaviour and the capacity to review police officer conduct, and
- the accountability of police to the broader community for the way they conduct policing practices.

Internal mechanisms

There are various means used by police to make practices accountable.. At the time of a pursuit, the policies demand that the pursuit vehicle initiate radio contact with the relevant authority (local, regional or central), with a controller or supervisor having the capacity to end a pursuit. This person is seen to offer a more detached view away from the tensions of the pursuit vehicle. Unfortunately, two factors undermine the capacity of controllers to fulfil their roles. The first is the underlying presumption that it is the officer on the spot who knows best. It is rare that the supervisor will override this assumption and end a pursuit. As one ‘experienced’ New South Wales police officer recently argued, ‘despite the debate to the contrary, police should and must retain the right to pursue offenders whenever the need arises’.¹⁷ Many police believe ‘the need’ should be determined by the officers in the pursuing vehicle. The second factor undermining supervisor control is the use of ‘follows’ or ‘disengagement’. As discussed above, these practices lessen supervisor control over the pursuing officer.

The English Police Complaints Authority report recommendations include that the supervisor needs much more control over the pursuit officers by playing a more active part in the risk assessment process. In particular, this would involve weighing up the proportionality between risk and suspected seriousness of offences and not allowing ‘follows’ to occur and, more generally, decreasing officer discretion to engage in a pursuit in the first instance.

Much of the research literature points to the need for clarification of the key terms used in pursuit policies such as ‘seriousness’ or ‘serious offence’.. Without clear guidelines on what these mean, control of pursuits is extremely difficult. In addition, the idea that police pursuits act as a deterrent is seriously misplaced. As a recent Queensland

review of police pursuits indicated, 'The duty of the police is not just to prevent crime, but to protect life and property' and therefore 'police organisations have to be alert to the dangers and substantial costs associated with pursuits' that the focus on the deterrent effect misunderstands.¹⁸

Accountability to the public

Police often call on the 'silent majority' who are portrayed as overwhelmingly supportive of police but unable to gain the public exposure of 'the police critics'.. There is some interesting data to consider here. First, there are the ubiquitous public opinion polls. In 1994, a Saulwick Poll (n=286) asked a New South Wales sample whether police should engage in high-speed pursuits according to four different criteria:

Criteria	Response
of all offenders	33%
of bank robbers/serious crime	39%
not at all	22%
don't know	6% ¹⁹

In other words, only one-third of respondents supported a general police policy of pursuit of all offenders. A more recent Sky News Poll in November 2002 asked if police should abandon vehicle pursuits when they reached high speeds:

Yes: 41% **No:** 59%.

This result may be questionable for its reliability, but it is suggestive of the public concerns with high speed pursuits, feelings often vented and more evident at the time of a pursuit fatality.²⁰

Second, more detailed academic research indicates that public support decreases when the risks associated with the pursuit increases.²¹ Research from the United States indicates that the level of support for the use of police pursuits varies according to what I will call 'ambient factors' such as weather conditions, type of offences being suspected, location of the pursuit, and the time of day. Each of these ambient factors overlaps with the others. In a class exercise, I asked students to respond to a series of brief scenarios and indicate their level of support for the use of a police pursuit.²² The students were most clear on the scenarios identified at the extremes on a continuum of risk. Following MacDonald and Alpert,²³ 'high risk' was identified as congested inner city at night in wet weather, 'low risk' as non-congested roadway during the day in dry weather. Furthermore, the scenarios also identified the type of suspected offence, ranging from very serious to minor offences. Again, the trend was towards increasing support as the level of seriousness increased.

Perhaps the most interesting of the scenarios was one that presented a divided response. The students were asked to consider an inner-city area with congested traffic conditions and wet weather. The offence was drink driving. The students were split in their level of support for a police pursuit:

males: Yes: 50%, No: 50%
females: Yes: 53%, No: 47%.

This has been one of the suspected offences in several recent pursuits ending in fatalities.

Conclusion

Police pursuits raise the fundamental question of the tensions between law enforcement and the protection of life, property and the provision of public order. We know that the public interest in policing demands that these objectives are weighed in such a manner that one does not threaten to undermine the others, and that the protection of life has primacy. When deliberating on such issues as police pursuits, it is the broader public order and safety and the protection of life that must predominate over the immediate considerations of enforcing a breach of law. Police pursuits cannot be properly justified by an adherence to a law enforcement logic that seeks to deny the role of discretion and alternative values in police work. This can and does result in a policing practice which is disproportionate to the suspected infringement, and

which fails to adequately account for other policing objectives or to explore alternative operational tactics.

This is not to argue that pursuits are not acceptable under any circumstances. However, given what we know so far about police pursuits in Australia and elsewhere, until alternative evidence is produced we should recognise that high risk high speed pursuits are not in the public interest except under very tightly defined circumstances (for instance clearly defined offences justifying pursuits, disallowing 'follows', no pursuits in unmarked police cars) and more proactive supervision.

After more than 30 years of detailed research and almost 200 years of common sense recognition of the centrality of discretion in police work, we realise how little public interest reasoning impacts on police practice when strict law enforcement reasoning prevails. Since the earlier research of Russell Hogg, through to the most recent deliberations on the moral hazards of police pursuits, a culture of law enforcement has influenced police policy in this area. Policy, practice and attitudes and their interaction need to be addressed. In this specific area of practice, which is of significant public interest, mere tinkering with policy will do little to protect human life.

Darren Palmer teaches Police Studies at Deakin University. email: dpalmer@deakin.edu.au © 2003 Darren Palmer (text)

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