ble offences, now triable only upon indictment in the National Court, should be triable summarily in the district court by senior magistrates. Cases include those without great complication e.g. stealing, breaking and entering, indecent dealings and assaults on women and girls. It is proposed that magistrates should be limited to imposing a maximum term of 4 years' imprisonment. The National Court is to retain a concurrent jurisdiction.

Mr. William Kaputin was one of the busiest participants at the recent Commonwealth Law Conference in Lagos. He took a particular interest there in sessions dealing with legal aid and legal education.

## Victorian reforms

Calmness reigns as legal reform rolls on.
D. Withington, *The Age*, 27 June 1980

Under the above caption, the Melbourne *Age* newspaper recorded the reappointment of the Victorian Law Reform Commissioner, Sir John Minogue QC for another year. The extension of Sir John's commission was announced on 25 June 1980 by the Victorian Attorney-General, Mr. Haddon Storey. Mr. Storey said that he was very pleased that Sir John had agreed to accept reappointment. Mr. Withington claimed that Sir John 'runs a relatively modest operation':

> Although Victoria has a full-time Commissioner, law reform here is a compromise between the old and the new style.

One report, based on a working paper, *'Duress, Coercion and Necessity'* is due for release shortly. This report will incorporate comments and submissions which have been received from interested parties since the working paper was released. Sir John is then expected to tackle the criminal defence of Provocation. In the course of working on this subject he is reported to have turned to examine Diminished Responsibility as a defence and he may report on this issue at the same time as on Provocation.

Diminished responsibility in Australian law hit the headlines with the decision of the High Court of Australia on 20 June 1980 in *O'Connor* v. *The Queen*. By a 4:3 majority, the Full High Court dismissed an appeal by the Attorney-General for Victoria against a decision of the Court of Criminal Appeal of that State. Put shortly, the case rejected the qualifications inserted into the law as to the availability of (self-induced) intoxication, as a defence to criminal charges generally. The House of Lords in *Director of Public Prosecutions* v. *Majewski* [1977] AC 443 had unanimously held that a defence of intoxication was limited to crimes of specific intent. This view is, broadly, followed in the United States and Canada. The majority of the High Court has now 'returned to first principle'. Social problems which follow from the decision were, according to the Chief Justice, a matter for the legislature and not for the judges:

> Though blameworthy for becoming intoxicated, I can see no reason for presuming his acts to be voluntary and relevantly intentional. For what is blameworthy there should be an appropriate criminal offence. But it is not for Judges to create an offence appropriate in the circumstances. ... It must be for the Parliament.

The Chief Justice specifically agreed with the comments of Mr. Justice Starke in the Victorian Court of Criminal Appeal who had said:

> I do not share the fear held by many in England that if intoxication is accepted as a defence as far as general intent is concerned, the floodgates will open and hordes of guilty men will descend on the community.

But Mr. Justice Gibbs was concerned about the social implications of the majority's retreat from *Majewski:*

> The law would afford quite inadequate protection for the individual and would rightly be held in contempt, if persons completely under the influence of drink or drugs could commit crimes with impunity.

Following the decision, there has been something of a storm. Scholarly writers are beginning to express appreciation for the determination of the High Court to uphold the principle that criminal intent is, normally, an essential ingredient of a criminal offence under

our jurisprudence. An editorial in [1980] 4 *Criminal Law Journal* 197 points to the confusions which arose from the attempts of the English court to 'divide the kinds of mens rea necessary to be proved in criminal cases into two classes of specific and basic intent:

> Nothing but confusion has reigned since the various attempts by the courts to specify what is meant by these two forms of mens rea.

Laymen were less kind to the majority and many expressed astonishment that such a decision could be arrived at. The Sydney *Sun* (23 June 1980) lamented:

> It will be greeted with alarm by a public already disturbed by an apparent imbalance of law in favour of wrongdoers over the interests of their victim. ... Some lawyers see the decision as correct and logical. With such a divergence of expert opinion, the public — with one eye on the floodgates — will expect the drunk's defence to be kept under the tightest possible legal restraint.

*The Sydney Morning Herald* (23 June 1980) was more acerbic:

> Judges are not bound to express the current wisdom on social policy. Nor should they ignore it — especially in a way that seems, on the face of it, to be at variance with common sense and common sensibility. The days when this country had a blind spot as far as alcohol was concerned ... have — it may be hoped — passed.

In Victoria the Attorney-General, Mr. Storey, pointed out that the High Court majority had suggested the possibility of new types of offences. 'I consider' he said 'that it requires very serious consideration'. He said that any new offence created would 'cover the situation where somebody commits what would otherwise be a crime, but for the fact that he was so intoxicated at the time he committed it'. He also pointed out that the case was limited to 'very rare cases where a person was incapable of forming an intention to commit a crime'. O'Connor's case arose when O'Connor stabbed an off-duty policeman who caught him interfering with a car. O'Connor's defence was that he had been taking a drug and drinking alcohol and had no recollection of what happened.

If Sir John Minogue is to tackle this subject, in addition to those upon which he is working now, further welcome extensions of his term of office can be contemplated! At the time of announcing Sir John's extension, Mr Storey pointed out that his recommendations on *Pre-Incorporation Contracts* had been included in one of the draft Companies Bills recently released by the Federal Government for public comment. That Bill will form part of the basis of uniform companies law throughout Australia, establishing the utility of Sir John Minogue's work for other jurisdictions as well as Victoria.

In September 1980 reports appeared in the press that the Victorian Government planned amendment of the Crimes Act to reform certain references to homosexual offences and to change the provisions in relation to punishment for the crime of rape. Although the Labor Opposition, through its Shadow Spokesman Mr J. Cain, has indicated general agreement to the proposal, opposition is being voiced in some political quarters and from various Church groups. The Melbourne *Age* (8 September) praised the proposed reforms as 'long overdue', claiming that the law 'has been left way behind by the community' because Victoria's parliamentarians have been 'so frightened of upsetting the conservative section of society that they have made an ass of the law'. But the paper lamented that the subjects of prostitution and incest law reform had not been tackled at the same time.

## bio-med again

> When the artless doctor sees
> No-one hope but of his fees
> Robert Herrick, *Litany to the Holy Spirit*, c.1654

It is comforting to read that concern about medical fees long ante-dates Medibank. But far transcending issues about fees today are the questions of whether doctors are truly 'artless' and whether they 'see' clearly the social consequences of enormous recent advances in medical technology. The age of computerised hospital surveillance is with us. So too is the age of: