cannot be used to satisfy the case of the spouse against whom a wrong has been committed, while the other principle can serve in the case of those spouses against whom no offence or misconduct can be proven. The legal system often uses different principles to dispose of distinguishable situations. The aim of your Committee is to suggest practical remedies for real grievances.

Basically, those opposed to mixing the two concepts are arguing that only one principle can apply; as one brief rejecting such a mixed system stated:

> "If you start with breakdown you are premising your solution on a particular meaning of marriage, and must act accordingly."[48]

Your Committee questions whether society at large has one particular view of marriage. Parliament is legislating for the whole of Canada. There is no doubt that many still hold to the matrimonial offence concept, just as it is clear that others are coming to believe in marriage breakdown. To reject one theory held by many, to replace it exclusively by one as yet held by relatively few would not be desirable.

Mr. Justice Scarman has expressed what seems to your Committee to be a realistic approach to the problem:

> "I believe that society recognizes that a spouse should be able to get a divorce when he or she has been deserted, has been treated with cruelty, or has had to face the infidelity of adultery. Why should a spouse, if in a position to prove any of these 3 situations, have to go further and prove irretrievable breakdown, or consent or failure of attempts at reconciliation? The ordinary man's sense of justice revolts at any such requirement. The law would do well to keep in touch with the ordinary man's idea of what is right and proper, and, though the lawyer can argue that the logical way to handle offences is solely as evidence of underlying breakdown, I think this argument, if carried to a logical conclusion, would fail to win general approbation and would certainly impose a very much greater strain on the administration of justice than our limited resources in legal manpower could meet."[49]

Another argument against the combination of the two systems is that it would provide an open-ended law and thus make divorce easier. The motto would be, if all else fails, try marriage breakdown.[50] With all due respect to the authors of *Putting Asunder*, your Committee does not accept this contention. It seems to ignore the fact that such a combination does exist in Australia, New Zealand, numerous American States and European countries. Were the separation ground to be introduced, there might immediately be a considerable number of divorces

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[48] *Proceedings* No. 9, November 29, 1966, p. 505.
[49] *Proceedings* No. 17, February 21, 1967, p. 920.
[50] *Putting Asunder*, p. 59.