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Why Lord Denning should retire

More than twenty years have passed since Parliament in its wisdom decided to impose a retiring age on judges. The age selected (75) was generous, and far above that prevailing in most areas of employment. By a further act of generosity it was provided that the new retiring age would not apply to existing judges. They could be relied on to respond voluntarily to the manifest wishes of Parliament.

The last of those existing judges is Lord Denning, the Master of the Rolls. He is 81, and fond of saying that he possesses all the Christian virtues except resignation. The law reports give signs that he might do well to acquire that missing virtue. His Lordship presides over the civil division of the Court of Appeal. An index of the efficiency of that court is the extent to which its decisions are upheld on further appeal to the House of Lords. The normal ratio is about fifty-fifty. In 1980 the All England Law Reports contained 14 cases where decisions in which Lord Denning was in the majority were appealed to the House of Lords. All but two were reversed by that House. By contrast the sixteen cases where Lord Denning was not in the majority displayed the customary proportion. Eight were upheld by the Lords and eight reversed. This remarkable discrepancy gives cause for disquiet.

Victorian judges were not subject to a compulsory retiring age. One of the greatest of them, Lord Brampton, retired voluntarily at that same age of 81. He tells us why in his *Reminiscences*: 'Time, in its never ceasing progress, had whispered to me more than once, "Tarry not too long upon the scene of your old labours, where your presence has made you a familiar object to all members of every branch of your great and responsible profession; and while health and vigour and intelligence still, by God's blessing, remain to you, apparently unimpaired by lapse of years, take some of that rest and repose which you have earned, ere it be too late".'

I have long differed from Lord Denning in his disregard of the value to the citizen of certainty in law and respect for precedent. Nearly thirty years have passed since I first ventured to criticise his views in a learned journal. Yet in common with the whole of our profession, I hold Lord Denning in the highest esteem and affection. It is those sentiments which now embolden me to remind him, most respectfully, of the wise words uttered by his Victorian predecessor.¹

¹ *The Times*, 20 January 1981. In May 1982 Lord Denning announced his retirement following an incident where his book *What Next in the Law* had to be withdrawn by the publishers after threats of a libel action: see *The Times* 2 June 1982.