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## Keeney: JUDGMENT BY PEERS

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JUDGMENT BY PEERS. By *Barnaby C. Keeney*. Cambridge: Harvard University Press. 1949. Pp. 191. \$2.50.

Trial by peers and trial by jury have often been thought of as interchangeable terms, having the same meaning. In this scholarly work, Mr. Keeney, Associate Professor of History and Dean of the Graduate School of Brown University, traces the history of trial by peers and demonstrates that the terms do not properly refer to the same thing. Mr. Keeney finds in the continental feudal courts of the seventh and eighth centuries the origin of judgment by peers. Following the development of the concept through the eleventh century, he concludes that while it had not then become a criterion for court make-up, it was thought of as a valuable check against despotism. The practice existed only where feudalism did and the author assumes that it was introduced into England with the Norman invasion. In England, trial by peers was used in controversies between king and subject, and required a court made up of barons, but other cases were tried by justices of the king's courts. By the thirteenth century, the term had come to mean trial by one's equals but royal disregard of the right was apparently not cured even by its inclusion in the Magna Carta. Mr. Keeney discusses Article 39 of that instrument in some detail and concludes that it required trials to be had in accordance with the law of the land in all cases, with the court composed of the subject's peers in king-baron controversies. In the latter half of the thirteenth century, the barons in Parliament became the body for trial by peers, but the cases show that it was not until after the time of Edward III that judgment by the peers of Parliament came to be a safeguard against arbitrary action by the king. The author does not deal with trials had in the lower courts, nor with the formation of the common law in general, but his research clearly shows that the development of trial by jury in the king's courts and that of trial by peers in other cases were entirely different things. The misconception that they were the same is shown to have had its roots early in the fourteenth century, when the idea that trial by jury was a trial by peers for all but earls and barons seems to have taken hold.