

The Earliest Arbitration Treaty? A Re-assessment of the Anglo-Norman Treaty of 991*

Abstract

Concluded at Rouen in March 991, the Anglo-Norman treaty has traditionally occupied a very small corner of the huge historiography for King Æthelred's reign as one of the first of the king's failures to deal with the threat of renewed viking raids. This article is an attempt to re-think the place and importance of this treaty in the scholarly literature by looking at it from the perspective of how diplomacy was practised in the earlier Middle Ages. This reveals the treaty as the earliest arbitration treaty in the medieval West, and shows alternative ways of viewing the immediate context and circumstances of the negotiations, as well as the persistence of important diplomatic practices across a long period.

In his 1977 article on war and society in the tenth century, Eric John noted that with the treaty of 991 and the marriage alliance between King Æthelred II and Emma 'the fateful connection between England and Normandy had begun.'¹ Despite John's assessment of the importance of these two agreements, among the many twists and turns of the events that eventually led to the Norman Conquest, the treaty concluded between the English king and the Norman duke in 991 has occupied a relatively low profile in the scholarly literature. Overshadowed by the marriage alliance between the English king and Emma of Normandy in 1002 – an alliance that would produce King Edward the Confessor who supposedly promised the English throne to Duke William of Normandy – the Anglo-Norman treaty has usually been seen by scholars as an interesting diplomatic document aimed at dealing with the immediate problem of the Normans harbouring viking raiders rather than one that was of any great longevity or significance. A careful examination of the 991 treaty and its diplomatic context suggests a need to rethink these claims. This article aims to re-focus the historiography of the origins of the Norman Conquest

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¹ Eric John, 'War and Society in the Tenth Century: the Maldon Campaign', *TRHS*, 5th ser. 27 (1977), 190-1.

by discussing the treaty of 991 in a context of how diplomacy was conducted and practised in the early medieval period to reveal alternative interpretations of the context and circumstances of the treaty. In reconsidering the immediate circumstances of the agreement, it reveals that the issue of dealing with viking raids is far from the only context within which to view the purpose of these negotiations. Instead, as this article shows, domestic enemies, merchants and pilgrims played a much larger role in the negotiations than scholars have often acknowledged, prompting the papacy to intervene in the dispute as an arbiter. It will further consider the significance of certain diplomatic practices recorded in the treaty, including the use of seals to identify the men of the two rulers. Ultimately, the article aims to show that this treaty is important not only in what it can tell us about diplomacy in the Middle Ages, but also in how a close reading of diplomatic documents and diplomatic practices can provide a new perspective on the relatively well-known events of Æthelred's reign and beyond.

The document in question is a letter in the name of Pope John XV detailing the reconciliation and peace agreement of 991 between King Æthelred II and Richard I, duke of Normandy, or the *marquis* as he is referred to in the letter. The document outlines how, having heard of the hostilities between Æthelred and Richard, Pope John sent his legate, Bishop Leo of Trevi, to the two rulers with letters admonishing them to put aside their hostility. First, he visited England, where he met the king on Christmas Day 990 and gave him the pope's letters. After consulting with his witan, the king agreed to make peace with Richard and sent Bishop Æthelsige of Sherborne, Leofstan son of Ælfwold and Æthelnoth son of Wigstan to Normandy with the legate. After peacefully receiving the pope's warning and hearing of the decision of Æthelred and his court, Richard confirmed the peace on the condition that if any of their people, or they themselves, were to commit any wrong against the other, it should be atoned for with fitting compensation. The peace was to remain forever and was confirmed at Rouen on 1 March

by the oaths of both parties, that is the three Anglo-Saxon envoys on behalf of Æthelred and Bishop Roger of Lisieux, Rodulf son of Hugh and Tursten son of Turgis on behalf of Richard. A postscript then adds that neither ruler was to receive the men or enemies of the other without the latter's seal.²

The treaty refers to the hostilities between Æthelred and Richard, but there is nothing in our narrative sources to indicate these. However, historians have usually considered that the treaty was concluded because the Norman leaders had a habit of welcoming other viking leaders in their lands.³ The last sentence of the treaty seems to confirm this when it states that 'Richard is to receive none of the king's men, or of his enemies, nor the king any of his.'⁴ We know that a much later Norse saga mentions that the Norman dukes welcomed certain viking leaders in their territory and the Norman chronicler William of Jumièges refers to one occasion when Svein of Denmark visited Duke Richard II at Rouen and he furthermore details a punitive raid on Normandy ordered and carried out by Æthelred and his men.⁵ Moreover, connecting the purpose of the Anglo-Norman treaty with wanting to eliminate Norman support for viking raids fits the historical context, as it is well known that viking raids on England resumed almost

² The letter has been printed several times with varying levels of accuracy. For the best Latin version, see P. Chaplais, *English Diplomatic Practice in the Middle Ages* (London, 2003), pp. 37-8. There are also Latin editions in H. Zimmermann, *Papsturkunden 896-1046*, 3 vols. (Vienna, 1984-9), I, no. 307, and in *Memorials of Saint Dunstan*, ed. W. Stubbs, RS 63 (London, 1874), pp. 397-8, which are based on the same manuscript but with some errors corrected by Chaplais. The document was copied by William of Malmesbury in the twelfth century and several editions exist based on manuscripts containing his work. For two examples, see *Willelmi Malmesbiriensis Monachi De Gestis Regum Anglorum*, 2 vols., ed. W. Stubbs, RS 90 (London, 1887-89), I, 191-3; William of Malmesbury, *Gesta Regum Anglorum* [hereafter WM, GR], 2 vols., ed. and tr. by R. A. B. Mynors, R. M. Thomson and M. Winterbottom (Oxford, 1998-9), I, 276-9. For an English translation, see also *English Historical Documents*. Vol. 1 c.500-1042, ed. D. Whitelock (London, 1955), no. 230.

³ A useful outline of the historiography surrounding this context is available in Bauduin, 'La papauté, les Vikings et les relations Anglo-Normandes', pp. 202-6.

⁴ '& de hominibus regis uel inimicis suis nullum Ricardus recipiat, nec rex de suis...' Chaplais, *English Diplomatic Practice in the Middle Ages*, p. 38.

⁵ *Óláfs saga helga*, in *Heimskringla*, 3 vols., ed. Bjarni Aðalbjarnarson, Íslenzk fornrit XXVI-XVIII (Reykjavik, 1941-51), II, cc. 20, 27 (English translation in *Snorri Sturluson, Heimskringla volume II: Óláfr Haraldson (the Saint)*, trans. A. Finlay and A. Faulkes (London, 2014), pp. 16, 20); *The Gesta Normannorum Ducum of William of Jumièges, Orderic Vitalis and Robert of Torigni*, 2 vols., ed. and tr. E. M. C. van Houts (Oxford, 1992-5), II, 10-19.

immediately upon Æthelred's accession to the throne in 978. If we believe Peter Sawyer that Æthelred and his great men were 'much richer' than their predecessors, it is at least certain that the English kingdom was an obvious target for raiders.⁶ Some historians have argued that it was the attack by the Danes on Watchet in Devon when Goda, possibly the shire reeve, and the most valiant thane Strenwold and several others were killed that allowed the English king enough leverage to be able to negotiate with the Norman duke.⁷ Eric John has noted that while the C-version of the *Anglo-Saxon Chronicle* seems to suggest that the English were defeated in Devon, the *Life of St Oswald* states that the English won and the vikings withdrew.⁸ Historians have argued that this is significant in terms of the Anglo-Norman treaty because it may well have been in reaction to the duchy harbouring these particular vikings that the negotiations began. Certainly, the English would have been in a stronger position having won. As Eric John has commented, 'presumably something, either an English expedition that has gone entirely unrecorded which seems to me improbable, or simply the credibility of English arms...had persuaded Duke Richard to come to terms.'⁹

However, it is important not to get too carried away with the viking raid connection. As was established long ago by Simon Keynes the main account of Æthelred's reign, in the annals from 983 to 1016, was put together, possibly in London, by someone working after the king's death and in full knowledge of eventual defeat by the vikings and the conquest of the English by their leader Cnut. Keynes argues rightly that the chronicler's analysis of the causes of defeat

⁶ P. Sawyer, *The Wealth of Anglo-Saxon England* (Oxford, 2013), 99-108.

⁷ John of Worcester, *Chronicon* [hereafter JW, *Chron.*], s.a. 988, in *The Chronicle of John of Worcester*, II: *The Annals from 450 to 1066*, ed. R. R. Darlington and P. McGurk with J. Bray (Oxford, 1995), pp. 436-7; Byrhtferth of Ramsey, *The Lives of St Oswald and St Ecgbwine*, ed. M. Lapidge (Oxford, 2010) 154-7 (v.5). See also ASC C, 988 in *English Historical Documents c. 500-1042*, ed. D. Whitelock, 2nd ed. (London, 1979), pp. 145-261 and in *Two Saxon Chronicles Parallel*, 2 vols, ed. C. Plummer (Oxford, 1892-9; repr. 1952), p. 125.

⁸ John, 'War and Society in the Tenth Century', p. 185; Byrhtferth of Ramsey, *The Lives of St Oswald and St Ecgbwine*, 156-7 (v.5).

⁹ John, 'War and Society in the Tenth Century', p. 189.

was probably influenced by his own experience and judgement of the most recent events rather than any events occurring in, say, 988.¹⁰ Moreover, there were in fact relatively few raids recorded in the 980s. According to the *Anglo-Saxon Chronicle* there were viking raids in 980, 981, 982 and 988. It seems unlikely that these four instances would have made the English worried enough about any supposed Norman involvement to start either hostilities or negotiations. While we know of attacks on eastern England from 991 onwards, and we could speculate that news of such mustering might have spurred the English king into action, the time scale between these later events and the start of the peace-making process – some seven to nine months – makes such considerations unlikely. It should also be noted that judging by where these raids took place, to the south but in particular to the southwest of England, it would make more sense for these raids to have been made by vikings active in the Irish Sea (or vikings harboured in the Norse settlements in Ireland) rather than by any Scandinavians harboured by the Normans. This was certainly Sawyer's conclusion about these early raids, noting that they were mostly in the west, 'probably by warriors from Dublin and other bases around the Irish Sea.'¹¹ Despite this the Norman connection to the raids has prevailed among scholars. For instance, Levi Roach, having referred to the raids of the 980s as 'small-scale affairs' and arguing that coinage shows that Æthelred was not unduly affected by these raids, still put the treaty into this traditional context.¹² In his biography of the English king, Ryan Lavelle, despite detailing a map of viking activity from this period showing that there were additional raids on Anglesey, Cheshire and Dyfed – which seems to indicate that these raiders at least came from the Norse settlements in Ireland rather than from Normandy – likewise concluded that the enmity referred to in the treaty of 991 was related to the Normans harbouring viking raiders.¹³

¹⁰ S. Keynes, 'A tale of Two Kings: Alfred the Great and Æthelred the Unready', *TRHS*, 5th Ser., 36 (1986), pp. 195-217, at 201.

¹¹ Sawyer, *The Wealth of Anglo-Saxon England* (Oxford, 2013), p. 108.

¹² L. Roach, *Æthelred the Unready* (London, 2016), pp. 116-17.

¹³ R. Lavelle, *Æthelred II King of the English 978-1016* (Stroud, 2002), p. 51.

Similarly, Eric Christiansen argued that with this treaty, Richard ‘promised to cease harbouring his enemies; who were presumably the Irish vikings responsible for the raid on Devon in 988 or Norman freebooters.’¹⁴ In fact, Dudo of St Quentin, writing in the early eleventh century, seemed to think that Richard I had made peace between the English and the Irish.¹⁵ Nevertheless, the geographical locations of the raids, the possible link to Ireland, and the economic rationale behind the raids, mean that it is perhaps unlikely that an agreement with the Norman duke would have put a halt to this viking activity, and historians need to consider carefully whether we would link the 991 treaty to the viking raids if we did not have the benefit of hindsight.

All the evidence of Norman involvement with the viking leaders of Æthelred’s reign is relatively late. For instance, the first specific reference to a Danish fleet sheltering in Normandy during Æthelred’s reign comes from the year 1000, and the Norse saga that mentions the viking leader Olaf, later better known as St Olaf of Norway, residing in Normandy connects him to events in c. 1015.¹⁶ Similarly, Svein of Denmark’s visit to Duke Richard at Rouen most likely belongs to 1013 or very early 1014, when Svein would have been eager for the Norman duke’s support in the face of the duke supporting the English king, who by then was the duke’s brother-in-law.¹⁷ Furthermore, the punitive raid by Æthelred on Norman lands, mentioned by William

¹⁴ Dudo of St Quentin, *History of the Normans*, tr. Eric Christiansen (Woodbridge, 1998), p. 226, n. 482.

¹⁵ *De moribus et actis primorum Normannorum Ducum auctore Dudone Sancti Quintini decano*, ed. J. Lair (Caen, 1865), p. 295: ‘Pacificabat enim Francigenas et Lotharienses, Burgundiones et Flandrenses, Anglos et Hibernenses, Northmannos et Britones.’ Dudo of St Quentin, *History of the Normans*, p. 169.

¹⁶ *ASC C(DE)*, 1000 (ed. Plummer, p. 133). This was also picked up by the twelfth-century chronicler Symeon of Durham in his *History of Kings*, for which see *The Historical Works of Symeon of Durham*, tr. Joseph Stevenson (London, 1855), p. 512. The saga of Olaf Haraldson states specifically that a first visit took place in the winter of 1013-14 and that Olaf, after Cnut had succeeded to the English throne, met Æthelred’s sons, Alfred and Edward, in Normandy. *Óláfs saga helga*, in *Heimskringla*, II, cc. 20, 27 (*Snorri Sturluson, Heimskringla volume II*, pp. 16, 20). It should be noted that this saga was compiled in the thirteenth century and, like all these later Norse sources, is notoriously difficult to use for real events, for which see R. Poole, ‘Skaldic Verse and Anglo-Saxon History: Some Aspects of the Period 1009–1016’, *Speculum*, 62 (1987), 265–98; Matthew Townend, ‘Contextualizing the Knútsdrápur: skaldic praise-poetry at the court of Cnut’, *ASE*, 30 (2001), pp. 145-79.

¹⁷ *The Gesta Normannorum Ducum*, II, 16-19. Fauroux, by contrast, saw the treaty between Svein and Richard as belonging to 1003. Marie Fauroux, *Recueil des actes des ducs de Normandie de 911 à 1066* (Caen, 1961), p. 23.

of Jumièges, is again not dated in the text but as Æthelred is referred to as being married to Emma, the daughter of Duke Richard I of the treaty and the sister of his successor Duke Richard II, one could argue that the incident took place after their marriage, that is, after 1002.¹⁸ Many historians, however, have seen this particular incident as belonging to the year 1000, probably connecting it to the entry in the chronicle, and that it was this punitive raid that eventually led to the marriage agreement.¹⁹ In any case, it is evident that the event belongs to a period that lies after the Anglo-Norman treaty of 991 and so the actual evidence connecting the treaty to the viking raids and in particular to the Normans harbouring vikings is circumstantial.²⁰ Indeed, it might be significant that later traditions seem to have been less inclined than modern historians to link the enmity between Richard and Æthelred to viking activity, with William of Malmesbury giving no real explanation and Matthew Paris and Roger of Wendover both stating that the Norman duke seized Englishmen travelling through his territories but that this was done on account of Emma of Normandy bad-mouthing her husband, the English king.²¹ Again, these writers seem to conflate the context and circumstances of the treaty of 991 with the later marriage between Æthelred and Emma, but they do not connect it to the Normans harbouring vikings.

There is evidence that indicates that there may have been other considerations uppermost in

¹⁸ *The Gesta Normannorum Ducum*, II, 10-15. Wace, in the twelfth century, gives a long account of this attack, again connecting it to a period after the marriage to Emma. *The History of the Norman People: Wace's Roman de Rou*, ed. G S. Burgess (Woodbridge, 2004), lines 1055-1190.

¹⁹ Lavelle, *Æthelred II*, p. 99; J. Campbell, 'England, France, Flanders and Germany in the Reign of Ethelred II: Some Comparisons and Connections', in his *Essays in Anglo-Saxon History* (London, 1986), pp. 191-207, at 199-200; *Encomium Emmae Reginae*, ed. A. Campbell, 2nd edn. (Cambridge, 1998), p. xlii.

²⁰ By contrast, there is contemporary evidence of the count of Flanders harbouring, or at least turning a blind eye to, these pirates, for which see *Memorials of Saint Dunstan*, ed. Stubbs, pp. 361-2; P. Grierson, 'The Relations between England and Flanders before the Norman Conquest', *TRHS*, 4th Ser. 23 (1941), pp. 71-112, at 89, 93, n. 2.

²¹ WM, *GR*, I, 276-7; *Flores Historiarum*, ed. H. R. Luard, 2 vols. (London, 1890), I, 521; *Mattaei Parisiensis chronica majora*, 7 vols., ed. H. R. Luard (London, 1872-83), I, 474-5. It is interesting to note that Archbishop Sigeric's journey to Rome in 990 seems to have taken a more northern route than the usual pilgrim route, landing, for instance, in Wissant in Flanders, which could be interpreted as confirming these later traditions about attacks on travellers. Grierson, 'Relations between England and Flanders', p. 80; Ortenberg, 'Archbishop Sigeric's Journey to Rome', p. 204.

Æthelred's mind when concluding this treaty. For instance, the vikings were not the only threat to the peace of Æthelred's kingdom. If we look at treaties or narratives describing the conclusion of treaties as a collection of sources, it is evident that one of the foremost purposes of concluding treaties was to ensure that those who had been expelled from one kingdom, for one reason or another, did not find shelter in another. There are numerous examples from treaties about participants of treaties not harbouring the enemies of the other. In fact, this is the most commonly recurring phrase in treaties across the whole of the medieval period.²² Occasionally, these enemies are further defined but crucially when they are, we do not often find specific individuals or peoples, such as the Danes or the Normans. Instead, these are usually definitions or terms referring to those who had committed serious offences, so called unemendable crimes, that is, these were individuals who had been exiled, banished or outlawed in some way or another. Consequently, the idea of not harbouring any enemies was usually aimed at enemies of a more domestic and 'criminal' kind.²³ This is further backed up by the evidence from narratives describing negotiations and just from the Anglo-Saxon period there are numerous references to this. For instance, in the early eighth century a letter of Bishop Wealdhere of London refers to the negotiations between a West Saxon king and King Cenred of Mercia stating specifically that the treaty included a clause to drive out each other's exiles.²⁴ Furthermore, the correspondence detailing the relations between Frankia and the various Anglo-Saxon kingdoms in the late eighth and early ninth century contains plenty of references to the fate of exiles or 'the king's enemies'.²⁵ We also know that in the reign of Æthelred there

²² For some examples, see J. Benham, 'Law or Treaty? Defining the Edge of Legal Studies in the Early and High Medieval Periods', *Hist. Research* 86 (2013), pp. 487-97, at 491-3.

²³ I am not convinced by Roach's argument, *Æthelred the Unready*, p. 117, that this phrase was generic enough to include vikings harboured by the Normans, simply because the evidence from other early treaties overwhelmingly shows it referring to domestic enemies and we know from other evidence, though it is fragmentary, that lists were kept of such individuals. A full discussion of this issue is forthcoming in J. Benham, *International Law in Europe, 700-1200*. A brief outline of the problem can be found in Benham, 'Law or Treaty', pp. 492-3, 495-6.

²⁴ London, British Library Cotton Augustus II, 18. A printed edition is available in *Engl. Hist. Documents*, I, no. 164.

²⁵ For some examples, see *Engl. Hist. Documents*, I, nos. 196, 197, 200, 207, 208.

were numerous examples of such exiles. For instance, the *Anglo-Saxon Chronicle* records how Ælfric, ealdorman of Mercia, was exiled in 985 and that Rochester was besieged for some unknown reason in 987.²⁶ The twelfth-century chronicler John of Worcester, who may or may not have had a now lost version of the *Anglo-Saxon Chronicle*, connected the two events, stating that Rochester was besieged after which Ælfric was banished.²⁷ Whatever the case, it seems possible that Æthelred in this early part of his reign may have been more concerned about events such as this and Norman support of such rogue elements of society than he was of Norman support of the vikings. All of this is not to say that the English king was not concerned about the renewal of the viking raids or that the Anglo-Norman treaty was not aimed at the viking problem, but rather that as historians we should not necessarily get too caught up in what may have been a relatively minor problem in the 980s. We would do well to remember that Æthelred had particular reasons to be concerned about divisions within his own kingdom because of how he himself came to the throne through the murder of his older brother Edward by a faction that included his mother and Bishop Æthelwold of Winchester, and looking at treaties and at diplomatic practices in general may show the well-known events of his reign in a new perspective.²⁸

Some scholars have acknowledged that in addition to the renewal of viking raids, there were wider political circumstances on the Continent that should be considered in explaining the reconciliation between Richard and King Æthelred. For instance, both James Campbell and Pierre Bauduin have highlighted the fallout from the election dispute over the see of Rheims after the death of Adalbero in 989 as being among these, and have suggested that the treaty

²⁶ *ASC*, 983 (ed. Plummer, p. 124-5); Roach, *Æthelred the Unready*, p. 117.

²⁷ *JW, Chron.*, s.a. 987 (ed. Darlington *et al.*, pp. 434-5). On the Rochester event, see also S. Keynes, 'King Æthelred the Unready and the Church of Rochester', *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, ed. Bruce O'Brien and Barbara Bombi (Turnhout, 2015), pp. 315-62, at 332-4.

²⁸ On the accession of Æthelred, see Lavelle, *Æthelred II*, pp. 41-5; A. Williams, *Æthelred the Unready: the Ill-Counselled King* (London, 2003), pp. 6-14.

reflect the papacy's attempt at seeking allies.²⁹ However, this has not gained widespread support and Bauduin himself acknowledges that Richard's attitude to these political events is not known and that the timeline provides further difficulties.³⁰ There is, however, a context which has eluded scholars until now and to see this we must both look more closely at the document but also put it into a wider perspective of other texts of treaties in the period 800 to 1200. The document, purporting to be a notification of Pope John XV, although not the original, has come down to us in an early manuscript, BL Cotton MS Tiberius A.XV (fos. 172v-173r): the only Anglo-Saxon treaty to have survived in a pre-Conquest manuscript. The manuscript is 'a codex composed of several units, originally distinct manuscripts, probably brought together by Robert Cotton.'³¹ The letter of 991 appears in the first section of the manuscript, the bulk of which contains a collection of letters by Alcuin. The letter of 991 is the last in the section, preceded by a letter of Ælfweard, abbot of Glastonbury, to Archbishop Sigeric (fos. 170r-172v), and a letter of Pope John XV to Ealdorman Ælfric of Hampshire (fos. 169v-170r), and it is succeeded by a blank page.³² 'Fos. 1-173 are a unit, written by a single scribe.'³³ The ultimate origin of the letter collection may have been Christ Church Canterbury, a theory which Caroline Brett has based on the script of the manuscript. As a radically different style was introduced at Christ Church Canterbury in the 1010s and 1020s, the manuscript must have been produced between 994 (the year of the death of Archbishop Sigeric to whom one letter is addressed) and c. 1010.³⁴ Another thing that connects the origin of the manuscript to Canterbury is the fact that the majority of the letters have a connection to this particular place.³⁵ Having said this, the

²⁹ J. Campbell, 'England, France, Flanders and Germany', p. 199; Bauduin, 'La papauté, les Vikings et les relations Anglo-Normandes', pp. 206-9.

³⁰ Bauduin, 'La papauté, les Vikings et les relations Anglo-Normandes', p. 208.

³¹ Caroline Brett, 'A Breton Pilgrim in England in the Reign of King Æthelstan', in *France and the British Isles in the Middle Ages and the Renaissance*, ed. G. Jondorf and D. N. Dumville (Woodbridge, 1991), pp. 43-70, at 51.

³² *Ibid.* p. 43, 52.

³³ *Ibid.* p. 52.

³⁴ *Ibid.* p. 53; Chaplais, *English Diplomatic Practice*, p. 37.

³⁵ Brett, 'A Breton Pilgrim in England', p. 53.

letter detailing the reconciliation between Æthelred and Richard is addressed generally, not to any archbishop of Canterbury specifically, and none of those mentioned in the letter had more than a general connection to Canterbury. Moreover, while other letters in this collection are preceded by a rubric, the letter of 991 is not, making it appear as if the copyist was uncertain of the letter's place in the collection.³⁶ It seems likely, however, that the connection is Sigeric, who became archbishop of Canterbury at the end of 989 or early in 990 and undertook a journey to Rome to collect his pallium in that year; a journey that the archbishop himself recorded. It is clear from this itinerary that Sigeric had a personal audience with Pope John XV, taking midday meal with him, and it seems likely that Sigeric could have been the source of the news of the hostilities between the English king and the leader of the Normans which the pope had heard of according to the treaty.³⁷ The possible personal involvement of the archbishop could explain why a copy of the treaty subsequently found its way into a Canterbury manuscript. Indeed, we know that Sigeric was clearly concerned about matters of peace and often took the lead in diplomacy, because in the autumn of 991 he can be found negotiating with some of the vikings, buying peace for Kent, and in 994, just before his death, he seems to have also been instrumental in the negotiations leading up to the treaty with the viking leaders Olaf Tryggvason, Josteinn and Guthmund Steitason.³⁸

The origin of the document as a copy of a notification in the name of Pope John XV has led scholars to question the extent to which it represents an original treaty or even the original

³⁶ The letter is separated from the previous item by a blank line and an initial 'J'. London, British Library Cotton Tiberius A.XV, fol. 172v.

³⁷ V. Ortenberg, 'Archbishop Sigeric's Journey to Rome in 990', *ASE* 19 (1990), pp. 197-246, at 203, 222; H. Vollrath, *Die Synoden Englands bis 1066* (Paderborn, 1986), p. 307. Note that the text of the treaty does not specify the source of the hostilities: 'nobis relatum est a compluribus de inimicitia Æðelrædi... & Ricardi' Chaplais, *English Diplomatic Practice in the Middle Ages*, p. 37.

³⁸ *Die Gesetze der Angelsachsen*, ed. F. Liebermann, 3 vols. (Halle, 1903-16), I, 220-5. A modern English translation is available in *The Laws of the Kings of England from Edmund to Henry I*, ed. A. J. Robertson (Cambridge, 1925), pp. 56-61.

notification of a treaty. Stubbs, following Jaffé, regarded the document as genuine because of the contemporary date of the manuscript, although he also considered that there were problems with it.³⁹ Zimmermann in his *Papsturkunden 896-1042* rejected the document on account of it not conforming with known papal chancery practices and suggested that it likely pertained to the dispute between Duke Richard II and Æthelred at the beginning of the eleventh century.⁴⁰ More recently, Chaplais has argued that this document could not have been issued by Pope John XV's chancery or even by someone as familiar with its practices as his legate Bishop Leo of Trevi, who is mentioned in the text. Chaplais, following Zimmermann, based this conclusion on the unusual form of the protocol, with Pope John being referred to as 'papa' and his number ('quintus decimus') rather than the more usual 'episcopus servus servorum Dei', and on the dating clause, 'Actum Rotomago...', which Chaplais noted refers to when the oaths to confirm the treaty were enacted at Rouen, far away from the pope and his chancery.⁴¹ Despite this, Chaplais also acknowledged that parts of the document, such as the notification clause, do conform with known papal chancery practices. From all of this, Chaplais deduced that the document was 'a record...drawn up or "dictated" by the bishop of Sherborne or by the bishop of Lisieux' and that this fitted well with the context of how royal diplomas more generally were drawn up in Anglo-Saxon England.⁴²

While these arguments clearly raise some difficult questions about this document, a few matters should be considered within this context. The first relates to the form of papal documents because, although this has long been established, most scholars recognize that it has not been

³⁹ Stubbs, *Memorials of Saint Dunstan*, p. 397; P. Jaffé, *Regesta pontificum romanorum ab condita ecclesia ad annum post natum MCXCVIII* (Berlin, 1851), p. 337.

⁴⁰ Zimmermann, *Papsturkunden*, p. 596. On the historical context, see above, pp. 00-00.

⁴¹ Chaplais, *English Diplomatic Practice*, pp. 37-8.

⁴² Chaplais, *English Diplomatic Practice*, pp. 39-40. Bauduin seems to reject this suggestion without explicitly saying so. P. Bauduin, 'La papauté, les Vikings et les relations Anglo-Normandes: autour du traité de 991', in *Échanges, communications et réseaux dans le haut Moyen Âge*, eds. Alban Gautier and Céline Martin (Turnhout, 2011), pp. 197-210, at 200 n.12.

applied with absolute consistency and often only to papal privileges. For instance, Reginald Poole, as early as 1915, noted that the number of simple papal letters preserved in the original is too small to enable scholars to lay down any precise rules of structure.⁴³ Similarly, Hans-Henning Kortüm, having examined Zimmermann's edition of papal letters for Italy, Spain, France and Germany, demonstrated that in the tenth and early eleventh century the exact papal chancery formula was less developed than Zimmermann thought and certainly not fixed.⁴⁴ The treaty of 991 is not a papal privilege and hence it could be stretching the evidence too far to expect this document to conform to any supposed customary form, in particular since there are no other such notifications among the papal letters listed in Zimmermann's edition. Furthermore, while Chaplais saw the dating clause as the most problematic part because it was dated at Rouen rather than where the pope was, it seems probable that this reflects that either Bishop Leo himself drew up, or he asked someone – maybe one of the bishops, as Chaplais suggested – to draw up, the original notification at the time the treaty was concluded.⁴⁵ I am not convinced that it would make sense for Leo to return to Rome, inform the pope, and the pope then issue the notification, when the whole negotiation process, according to the text as we have it, was conducted by the pope's representative. The evidence of such a practice within diplomacy is scant and comes much later than this treaty, in the thirteenth century, when, occasionally, the parties, usually years later, asked the pope to issue a confirmation, and these instances are not treaties negotiated by a papal legate.⁴⁶ It could be argued that in context, the dating clause makes more sense than the title of the pope in the protocol. Indeed, even a twelfth-

⁴³ R. L. Poole, *Lectures on the History of the Papal Chancery down to the Times of Innocent III* (Cambridge, 1915), p. 50. On the structure of papal documents more generally, see *ibid*, pp. 41-50; T. Frenz, *Papsturkunden des Mittelalters und der Neuzeit* (Stuttgart, 2000), pp. 16-26.

⁴⁴ H.-H. Kortüm, *Zur päpstlichen Urkundensprache im frühen Mittelalter* (Sigmaringen, 1995), p. 387.

⁴⁵ This is further strengthened by Leo's title, 'apocrisarius', indicating someone with the necessary knowhow and power to negotiate, conclude and draw up documents on behalf of the pope.

⁴⁶ One such example is the treaty between Emperor Frederick II and Valdemar II of Denmark originally concluded in 1214 and later confirmed by Pope Innocent III in May 1216. *Diplomatarium Danicum I*, 7 vols., eds. C. A. Christensen et al. (Copenhagen, 1957-90), V, nos, 48, 83.

century corrector saw fit to revise this part of the document, adding ‘omnibus fidelibus’ after the word ‘papa’ so that the document would read as if it had an address: this was clearly what he expected of such a document.⁴⁷ In addition, it is also interesting to note that from the papal documents edited by Zimmermann, notifications of synodal decisions or notifications of decisions following interventions in disputes seem to have used similar dating clauses to the 991 notification, i.e. ‘actum’, ‘acta est’ or ‘decretum est’ rather than the customary ‘datum’.⁴⁸ Zimmermann himself acknowledged that synodal writing took place without taking into consideration the *Liber Diurnus*, a collection of formularies used in the papal chancery, and it seems likely that these documents were all dated in that particular way as a reflection of when a decision was enacted in front of witnesses and in the presence of papal representatives or the pope himself.⁴⁹

The conclusion of Chaplais about the document being a record drawn up or dictated by the bishops of Sherborne or Lisieux fitted his idea that all English treaties from this period had been unilaterally drawn up by the English side, likely for publication purposes, rather than being copies of treaties delivered by one side to another.⁵⁰ Chaplais further considered that an original treaty might have been more likely to be drawn up as a chirograph, as it is also the format of the Treaty of Dover from 1101 – the first treaty of an English ruler to have survived in the original – and as the chirograph was widely used in England and occasionally in France in the tenth century, even though he also conceded that this would have been highly unlikely

⁴⁷ Chaplais, *English Diplomatic Practice*, p. 37.

⁴⁸ For three examples, see Zimmermann, *Papsturkunden*, I, no. 198; *ibid.*, II, nos. 341, 396. Note that to ascertain this, I looked only at originals or copies in manuscripts from the tenth or eleventh centuries. Later copies, and especially those of the seventeenth or eighteenth centuries, regularly feature similar dating clauses, but need not concern us here.

⁴⁹ Zimmermann, *Papsturkunden*, I, p. 393. For another example of such a synodal notification, which has neither a customary protocol nor dating clause, see Zimmermann, *Papsturkunden*, I, no. 269.

⁵⁰ Chaplais, *English Diplomatic Practice*, p. 36.

as King Æthelred was not present in Normandy.⁵¹ However, Chaplais did perhaps not appreciate fully that very few treaties before 1200 are chirographs and those that are, all involve a transaction of some sort, in land and/or in money, and this makes it unlikely that treaties, like that of 991, that did not involve such transactions were originally drawn up as chirographs.⁵² If we widen our search to compare treaties from across Europe in the period 800 to 1200, one clear answer emerges: the Treaty of Rouen is an arbitration treaty. Such treaties are distinct from others, achieved by mediation or direct negotiations, by the fact that an arbiter – a third party with no direct involvement in the conflict – had been given the power by both parties to make and impose a decision in the dispute.⁵³ Arbitration treaties are always issued as notifications of the third party; that is, the party that essentially guaranteed it. By contrast, treaties achieved by mediation or by direct negotiations are never issued by those who had negotiated them but always survive in texts issued by one or both of the contracting parties, i.e. the rulers or communities involved. There are only four arbitration treaties from across this period – three of which have surviving texts and one for which the terms can be recovered from the narrative evidence – and although this is a relatively small number, they show remarkable consistency in format. Within this small number, the best comparison is not to another English arbitration treaty but rather to one issued by the pope, and we can find this with the *Treaty of Grosseto* of 1133. This treaty, in which Pope Innocent II acted as the arbiter in the conflict between the cities of Genoa and Pisa, set out the involvement of envoys and their oaths

⁵¹ The chirograph had the text of the treaty twice over on the same parchment with the word *CYROGRAPHUM* written between the two texts. A cut through the letters could then be made and each party would be handed an authentic record of the treaty. Chaplais, *English Diplomatic Practice*, pp. 40-1.

⁵² There are only four such treaties involving the English king from the whole of the twelfth century. The treaties of Dover of 1101, 1110 and 1163, and the 1173 agreement of King Henry II and Count Humbert of Maurienne over the marriage between Henry's son, John, and the count's daughter, Alice. *Diplomatic Documents Preserved in the Public Record Office, 1101-1272, I*, ed. P. Chaplais (London, 1964), nos. 1, 2, 7; *Gesta Regis Henrici Secundi Benedicti Abbatis*, 2 vols., ed. W. Stubbs, RS 49 (London, 1868-71), I, 36.

⁵³ This concept was based on Justinian's *Digest* and detailed that arbiters differed from ordinary judges in that their power came only with the consent of the litigants, i.e. *arbiter ex compromisso*. *Digest*, I:4.8. On arbiters/arbitrators and mediators more generally, see H. Kamp, *Friedensstifter und Vermittler im Mittelalter* (Darmstadt, 2001).

underpinning the treaty, and ordered the cities to refrain from war and discord, to observe firm peace and to pay fitting compensation in case of any future disputes. The treaty, furthermore, does not follow the usual fixed structure of papal letters but is given in the first-person singular with the pope referring to himself simply as ‘papa’.⁵⁴ In all, despite 150 years separating the two treaties, they show consistency both in content and in format.

The *Treaty of Grosseto* and the Anglo-Norman treaty differ from the other two arbitration treaties in that the focus is on peace and in that the issue in dispute is not mentioned in the texts.⁵⁵ In 1133, the conflict centred on control over the island of Corsica, and we know about this from a papal bull issued to Bishop Siro of Genoa on the same day as the treaty was concluded (20 March). This bull outlines the conflict between the two cities and the violence committed, which made them an enemy of all mankind (‘*humani generis inimico*’) – an expression which can be linked to just war theory and international criminal law.⁵⁶ The solution was to raise Siro and his see from a bishopric to an archbishopric and divide equally the jurisdiction over the sees on Corsica between the archbishops of Genoa and Pisa, with each receiving three sees.⁵⁷ Of particular interests in this is the phrase ‘enemy of all mankind’. This was usually applied to violence and offences committed that were distinctly ‘unchristian’ in nature: raiding and plundering (in particular church property), and killing, injuring, capturing

⁵⁴ *Codice diplomatico della repubblica di Genova*, 4 vols., ed. C. Imperiale di Santangelo (Genoa, 1936-42), I, pp. 76-7 (no. 64).

⁵⁵ This can be contrasted with the arbitration by Henry II of England between Alfonso VIII of Castile and Sancho VI of Navarre in 1177, which was over specific properties. For which see *Chronica magistri Rogeri de Hovedene*, 4 vols., ed. W. Stubbs, RS 51 (London, 1868-71), II, 129-31. Similarly, the arbitration by Frederick Barbarossa in 1152 between the two claimants, Svein and Cnut, related to the Danish kingship, for which see *Diplomatarium Danicum I*, II, nos. 103-4, 110-11; *Otonis et Rahewini Gesta Friderici I imperatoris*, 3rd edn., ed. G. Waitz, revised by B. de Simson (Hanover, 1912), p. 106; Saxo Grammaticus, *Gesta Danorum: the History of the Danes*, 2 vols., eds. P. Fisher and K. Friis-Jensen (Oxford, 2015), II, 1034-5; *Helmold von Bosau Slawenchronik*, ed. B. Schmeidler, revised by H. Stoob (Darmstadt, 1973), c. 73 (pp. 254-5).

⁵⁶ On the phrase ‘enemy of all mankind’ (*hostis humani generis* or *humani generis inimico*), see Z. Bohrer, ‘International Criminal Law’s Millennium of Forgotten History’, *Law and History Review*, 34 (2016), pp. 395-404, 409-10, 419-64; F.H. Russell, *The Just War in the Middle Ages* (Cambridge, 1977; repr. 1979), pp. 240-3.

⁵⁷ *I libri iurium della repubblica di Genova*, vol. 1/2, ed. D. Puncuh (Rome, 1996), 13-14 (no. 282). For a short summary of the dispute and its context, see C. D. Stanton, *Medieval Maritime Warfare* (Barnsley, 2015), pp. 119-21.

or enslaving Christians, especially non-combatants or specific groups such as pilgrims or merchants. In 1133, the papal privilege to Siro stated explicitly that these were offences committed during the conflict. The phrase ‘*humani generis inimico*’ does not appear in the treaty of 991 but it asks both parties to ‘*repiscerent*⁵⁸ ab [hac] superstitione’.⁵⁹ Dorothy Whitelock translated this as that they should ‘recover from their violence’, while R.A.B. Mynors et al., opted for ‘recover from pagan behaviour.’⁶⁰ Clearly, what the phrase refers to is violence that was not befitting a Christian, just as the later ‘enemy of all mankind’.

The fact that the decision of the arbitration in 1133 was contained in a separate document is interesting and the implication for the 991 treaty is evident, but, more importantly, it shows that papal arbitrations were usually concerned with disputes that fell under the jurisdiction of the Church and through which the pope could exercise his right as the highest peacemaker on Earth.⁶¹ In these cases, the arbitrations achieved both a judgment and a peace, were justified by the parties having engaged in violence that was unchristian, and were fully enforceable through interdict and excommunication by the fact that they rested on the parties’ own agreement to submit their dispute to arbitration. By contrast, arbitration by peers, i.e. between and by rulers rather than the pope, was a way to achieve a decision over a limited issue, was not intended to achieve peace but could facilitate it, and the arbiter was expected to enforce his decision by using the full extent of his familial, economic and cultural links with the parties.⁶²

⁵⁸ *Sic* in MS. for *resipiscerent*.

⁵⁹ Chaplais, *English Diplomatic Practice*, p. 37.

⁶⁰ *Engl. Hist. Documents*, I, no. 230; WM, *GRA*, I, 278-9. See also ‘*Superstitio*’, in C. Du Cange et al., *Glossarium mediae et infimae latinitatis*, ed. Niort (Paris, 1883-7), vol. 7, col. 670c, available at <http://ducange.enc.sorbonne.fr/SUPERSTITIO> [accessed: 12 July 2018]. Cf. J. Tolan, ‘*Lex alterius*: Using Law to Construct Confessional Boundaries’, *History and Anthropology*, 26 (2015), pp. 55-75, at 59.

⁶¹ Kamp, *Friedensstifter und Vermittler*, 217.

⁶² This is clear both from other arbitration treaties and from so called arbitration panels within treaties. For some examples of arbitration panels from the period before 1150, see P. H. Sawyer, *Anglo-Saxon Charters: an Annotated List and Bibliography* (London, 1968), in its revised form available online as the ‘Electronic Sawyer’ (www.esawyer.org.uk), S1428b; ‘*Ordinatio imperii*’, in *MGH Capit. I*, ed. A. Boretius (Hannover: Hahn, 1883) c. 10 (p. 272); ‘Treaty of Dover (1110)’ in Chaplais, *Diplomatic Documents*, i, p. 7.

Though it may be tricky to separate secular from ecclesiastical matters in this period, it is worth emphasising that the enforcement methods available to the papacy make it unlikely that any ruler would agree to submit to arbitration any dispute that might potentially reduce his ability to act independently or, worst case scenario, render his own legitimacy to rule in question. Excommunication and interdict could do exactly that.⁶³ All the evidence points to that both peer and papal arbitrations were rare for the reasons outlined above and, as a consequence, only ever effected over very limited issues. The Normans harbouring enemies does not easily fit into a context of either a limited issue or of ecclesiastical jurisdiction, even if these enemies may have been engaging in violence that was widely condemned by the Church.⁶⁴ The text of the treaty is, in any case, clear that the violence had been committed by the disputants, not any third parties that they were harbouring, and both the Norman leader and the English king were rebuked for engaging in it.⁶⁵ In all, putting the Anglo-Norman treaty of 991 into a wider context of other treaties from the period 800 to 1200 shows that the notification is very significant as it is the only such pre-1100 document and evidence that arbitration could be a solution to international disputes and not just a strategy to resolve future conflicts as in the case of arbitration panels within treaties. It is also significant in showing that the viking context is probably a red herring and that the real issue in dispute was something over which the Church had direct jurisdiction.

Examining the content of the *Treaty of Rouen* and what it reveals about diplomatic practice in this period can offer some further interpretations that flesh out the meagre bones of the

⁶³ J. A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 110.

⁶⁴ There are examples of expulsion cases being appealed to the papacy, but this is usually because the exiles in question were ecclesiastics and therefore also under threat of excommunication. For one well-known example involving Offa and Charlemagne in the late eighth century, see *MGH Epist.*, IV, ed. E. Dümmler (Berlin, 1895), no. 100, p. 145.

⁶⁵ ‘nobis relatum est a compluribus de inimicitia Æðelrædi Saxonum Occidentalium regis necnon & Ricardi marchionis...apocrisarium nostrum Leonem...misimus [eum] illuc cum litteris nostris exortatoriis, ut repiscerent ab [hac] superstitione.’ Chaplais, *English Diplomatic Practice*, p. 37.

immediate historical context. One matter of interest for how diplomacy was conducted in this period concerns the last sentence of the treaty, which states that neither Æthelred nor Richard was to receive the enemies or men of each other without their seals.⁶⁶ Both Chaplais and Keynes have referred to this 991 example as an occasion when the seal was used as credence, that is, as an assurance that the man approaching the king (or the duke) came on official business.⁶⁷ The problem with the statement in the treaty is that the Norman dukes do not seem to have had a seal in this early period. Chaplais has argued that prior to the Conquest, Duke William ‘never thought it would enhance his ducal prestige to set a seal to his charters: he was quite content to draw a cross at the foot of the document.’⁶⁸ This seems to hold true also for earlier Norman leaders, with Fauroux concluding that the earliest use of a Norman seal dates from 1025.⁶⁹ Hence, it is not entirely clear what seal any Norman men were supposed to produce when entering English territory.

In England, we know that seals were also sometimes carried loose and were used to support both oral messages and written documents.⁷⁰ Perhaps it is in this context we should see the reference in the treaty to Norman men carrying the seal of their leader, because while there is no evidence of seals being used to seal documents in Normandy prior to 1025, and possibly later, there is, similarly, little evidence of seals being used to seal documents in England in this period. Chaplais concluded some time ago that ‘all the documents issued in the name of Anglo-

⁶⁶ ‘& de hominibus regis uel inimicis suis nullum Ricardus recipiat, nec rex de suis sine sigillo eorum.’ Chaplais, *English Diplomatic Practice in the Middle Ages*, p. 38.

⁶⁷ S. Keynes, *The Diplomas of King Æthelred ‘the Unready’ 978-1016* (Cambridge, 1980), pp. 139-40; P. Chaplais, ‘The Anglo-Saxon Chancery: from the Diploma to the Writ’, *Jnl. of the Soc. of Archivists* 3 (1966), pp. 160-76, at 168-9.

⁶⁸ Chaplais, ‘The Anglo-Saxon Chancery’, pp. 160-1; Fauroux, *Recueil des actes des ducs de Normandie*, p. 57.

⁶⁹ Fauroux, *Recueil des actes des ducs de Normandie*, no. 34, pp. 124-31. See also discussion in J.-F. Nieuws, ‘Early Aristocratic Seals: an Anglo-Norman success story’, *ANS* 38 (2016), pp. 97-124.

⁷⁰ Chaplais, ‘The Anglo-Saxon Chancery’, pp. 167-8; Keynes, *The Diplomas of King Æthelred*, pp. 138-9; T.A. Heslop, ‘English Seals from the Mid Ninth Century to 1100’, *Journal of the British Archaeological Association*, 133 (1980), pp. 1-16; J. Roberts, ‘What did Anglo-Saxon Seals Seal When?’, in *The Power of Words. Essays in Lexicography, Lexicology and Semantics*, ed. G.D. Caie, C. Hough and I. Wotherspoon (Amsterdam, 2006), pp. 131-53.

Saxon kings fall under two main categories, the diplomas, always unsealed, and the writs, of which sealed originals are extant for the reign of Edward the Confessor.⁷¹ More recently, Jane Roberts has shown that the practice of securing charters with seals was known to Anglo-Saxon audiences from at least the 960s.⁷² Nevertheless, the treaty likely referred to seals being carried loose and this, of course, fits the evidence for Normandy too, in that the earliest use of a Norman seal attached to a document being 1025 does not disqualify it from being carried loose prior to that time. In a context of diplomacy, this seems to have imitated practice elsewhere.⁷³ For instance, the *Russian Primary Chronicle*, refers to an occasion in 944-5 when Prince Igor I of Kiev and the Byzantine emperors concluded a treaty which stated that until then the prince's agents going to Greece had carried gold seals and his merchants silver ones.⁷⁴ The link between this occasion and the statement in the treaty is strengthened by the recent find of an Anglo-Saxon copper-alloy seal matrix, dating to Æthelred's reign, with remnants of gilding, which would have made it appear to have been made of gold.⁷⁵ We further know that elsewhere in Europe, among the additions made by King Ratchis to the Lombard laws in 746, there is a clause that details that foreign men would have to be in possession of a document carrying the seal of the king ('signo aut epistola regis'). The stipulation makes it clear that this functioned in such a way that specific border stations were guarded so that 'neither our enemies nor our people can send spies through them or allow fugitives to go out and in.' A judge should enquire from where they had come and if deemed to be without evil intent, the judge or the gate warden could issue a document ('syngraphus') that the traveller would show on his onward journey to Rome. On the way back, this document had to be validated with the seal of the king's ring.⁷⁶

⁷¹ Chaplais, 'The Anglo-Saxon Chancery', p. 162.

⁷² Roberts, 'What did Anglo-Saxon Seals Seal When?', pp. 138-40.

⁷³ Chaplais has noted that finger rings and loose impressions of seal matrices may provide further evidence of this diplomatic practice from Anglo-Saxon England. Chaplais, *English Diplomatic Practice*, 30.

⁷⁴ *The Russian Primary Chronicle*, ed. S. H. Cross and O. P. Sherbowitz-Wetzor (Cambridge, MA, 1953), p. 74.

⁷⁵ J. Kershaw and R. Naismith, 'A New Late Anglo-Saxon Seal Matrix', *ASE* 42 (2013), pp. 291-8.

⁷⁶ 'Ratchis regis capitula in breve statuta', ed. F. Bluhme, in *MGH Legum IV: Leges Langobardorum*, ed. G. H. Pertz (Hannover, 1868), 192; 'The Laws of King Ratchis', in *The Lombard Laws*, ed. K. Fischer Drew

This clause of course related to the Alpine passes where large numbers of people passed through on a regular basis, and it is evident that some semblance of Ratchis's clause can be seen across the period 700 to 1200, and not just relating to the Alpine passes. For instance, Cnut's letter to the English of 1027, issued on his way home from a sojourn in Rome, shows that some such procedure was still in place almost three hundred years later:

'I therefore spoke with the Emperor and the lord pope and the princes who were present,⁷⁷ concerning the needs of all the people of my whole kingdom, whether English or Danes, that they might be granted more equitable law and greater security on their way to Rome, and that they should not be hindered by so many barriers on the way and so oppressed by unjust tolls; and the emperor consented to my demands; and King Rudolf [of Burgundy], who chiefly had dominion over those barriers, and all the princes confirmed by edicts that my men, whether merchants or others travelling for the sake of prayer, should go and return from Rome in safety with firm peace and just law, free from hindrances of barriers and toll-gatherers.'⁷⁸

The letter clearly shows that King Rudolf of Burgundy, at this time, was in charge of those Alpine passes the English were expected to travel through but, furthermore, that similar provisions could be found in other political entities, as Cnut concluded treaties with several rulers to ease the journey of those from England who had legitimate business to be travelling through an area.⁷⁹ That such treaties were not new in 1027 can, moreover, be confirmed by the

(Philadelphia, 1973), c. 13. For a good discussion of this provision and the literature, see W. Pohl, 'Frontiers in Lombard Italy: the Laws of Ratchis and Aistulf', in *Transformation of Frontiers*, eds. W. Pohl et al. (Leiden: Brill, 2001), pp. 117-41, at 117-27.

⁷⁷ Earlier in the letter these are referred to as 'all the princes of the nations from Mount Garganus [southern Italy] to the sea nearest to us', likely the North Sea. Cn 1027, in *Die Gesetze der Angelsachsen*, I, 276 (c. 5).

⁷⁸ Cn 1027, in *Die Gesetze der Angelsachsen*, I, 276 (c. 6).

⁷⁹ On the issue of identification generally, see also C. Judde de Larivière, 'Du sceau au passeport: genèse des pratiques médiévales de l'identification', in *L'identification. Genèse d'un travail d'État*, ed. G. Noiriel (Paris,

Honorantie Civitatis Papie – a set of regulations for the royal court at Pavia that dates either from Æthelred’s reign or from very early in Cnut’s reign. The second of the regulations refer to an agreement between the king of the Angles and Saxons and the king of the Lombards, according to which the English would no longer have to pay the *decima* and would receive a ‘sigillum’ (either a seal or sealed letter) from the master of the Pavian treasury so that they could come and go more freely.⁸⁰

If legitimate travellers had to identify themselves, who might they be? In the case of the Treaty of Rouen, such men must have included the king’s men on diplomatic missions and ecclesiastics on Church business. However, the two most numerous groups of legitimate travellers were likely merchants and pilgrims, just as highlighted in Cnut’s letter and the *Honorantie*. The restoration of friendly relations in 991 would have been imperative to protect the lucrative trade between the two regions. It is well known that one of Æthelred’s laws awarded special privileges to the ‘men of Rouen’ (‘homines de Rotomago’) when trading in fish and wine, which Stéphane Lebecq and Alban Gautier have speculated ‘could have been a consequence of the 991 agreement.’⁸¹ This is possible even though Patrick Wormald concluded in 1978 that this law, although known as IV Æthelred, was likely promulgated before I-III Æthelred, perhaps in 984-5, and hence before the treaty.⁸² Later Wormald amended this, concluding that this part of IV Æthelred, known as the ‘London customs’, may not have existed as early as the 980s but as most of the manuscript collections containing the law connect it to

2007), pp. 57-78.

⁸⁰ ‘Rex vero Anglorum et Saxonum... et Rex Longobardorum hoc insimul modo convenerunt: gens Anglorum et Saxonum numquam deberent addecimari... et recipere sigillum a magistro camere, quod in eundo et redeundo nullam molestationem recipient.’ *Die “Honorantie Civitatis Papie”*, tr. Carlrichard Brühl, (Cologne, 1983), p. 19.

⁸¹ IV Æthelred, in *Die Gesetze der Angelsachsen*, I, 232-4; S. Lebecq and A. Gautier, ‘Routeways between England and the Continent in the Tenth Century’, in *England and the Continent in the Tenth Century*, eds. D. Rollason, C. Leyser and H. Williams (Turnhout, 2010), pp. 17-34, at 27.

⁸² P. Wormald, ‘Æthelred the Lawmaker’, in *Ethelred the Unready: Papers from the Millenary Conference*, ed. D. Hill, BAR British ser. 59 (Oxford, 1978), pp. 62-3.

III Æthelred, it had likely been promulgated before that particular law; that is, before 997.⁸³ Regardless of the date of the law, in a context of diplomacy more generally, the connection between Anglo-Norman trade and the treaty makes perfect sense because most treaties have clauses referring to trade even when this was not the main aim of the agreement. For instance, the treaty of 994 between King Æthelred and the viking leaders Olaf, Josteinn, and Guthmund, concluded with the aim of employing these leaders against other viking raiders, has a number of chapters concerning merchants and their ships and goods, thereby ensuring that they would receive free and safe passage on land and water.⁸⁴ Facilitating the movement of merchants and regulating trade was, and continues to be, one of the prime purposes of diplomacy. However, a letter from Charlemagne to Offa, king of the Mercians, usually dated to 796, shows that at times subjects tried to circumvent more formal agreements and customary practices. Charlemagne writes: ‘But we have discovered that certain persons fraudulently mingle with them [the pilgrims] for the sake of commerce, seeking gain, not serving religion. If such are found among them, they are to pay the established toll at the proper places; the others may go in peace.’⁸⁵ Pilgrims may have been easily recognisable by their garb and staff but, to prevent fraud, men had to show who they were before conducting any business, trade or otherwise.⁸⁶ Rarely do we know how these men were to identify themselves, but in the Treaty of Rouen the historian evidently has the answer: with a seal.⁸⁷ Whether or not this statement was intended as a sealed

⁸³ P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, I: *Legislation and its Limits* (Oxford, 1999), pp. 248, 322-3, 328.

⁸⁴ II Æthelred, in *Die Gesetze der Angelsachsen*, I. 220–5 (c. 2-5). A modern English translation is available in *The Laws of the Kings of England from Edmund to Henry I*, ed. A. J. Robertson (Cambridge, 1925), pp. 56–61. For a few examples of other treaties with clauses relating to trade, see Benham, ‘Law or Treaty?’, p. 492.

⁸⁵ ‘Sed probavimus quosdam fraudolenter negociandi causa se intermiscere, lucra sectantes, non religioni servientes. Si tales inter eos inveniantur, locis oportunitis statuta solvent telonea. Ceteri absoluti vadant in pace.’ *MGH Epist.*, IV, ed. E. Dümmler (Berlin, 1895), no. 100, p. 145. (A translation is available in *Engl. Hist. Documents*, I, no. 197.)

⁸⁶ Among the Merovingian and Carolingian formularies edited by Zeumann, there is a template for a document that could be adapted for those travelling as a merchant or a pilgrim but there are no equivalents from any of the Anglo-Saxon kingdoms. *Formulae Merovingici et Karolini aevi*, ed. K. Zeumer (Hannover, 1886), pp. 314–15 (merchants) and pp. 439–40 (pilgrims).

⁸⁷ Some scholars have briefly discussed the use of letters of introduction, which again raises the issue of whether these were sealed or not, for which see N. Middleton, ‘Early Medieval Port Customs, Tolls and Controls on Foreign Trade’, *EME*, 13 (2005), 313–358 at pp. 319-20.

document or as the seal being carried loose is in some ways irrelevant because it is clear both from domestic and international evidence that both practices were known and used in this period.

Examining the evidence relating to seals and the identification of foreign travellers, shows that the Anglo-Norman treaty might feasibly have been concluded to ensure the safe passage of pilgrims and merchants, and that attacks on these, rather than the Normans harbouring raiders, were the cause of the enmity referred to in the treaty. Moreover, attacks on these two groups could certainly explain the papacy being asked to intervene in the dispute. That attacks on pilgrims were an issue that the papacy took seriously is evident from William of Malmesbury's comments on the problem during the pontificate of Gregory VI in the 1040s and also from the letters of Pope Gregory VII in the 1070s.⁸⁸ Additionally, the *Honorantie* provides significant evidence that disputes frequently erupted between travelling pilgrims and merchants, and local men.⁸⁹ Viewing the treaty in this context, moreover, makes some of the other loose threads about it come together. For instance, the document appearing in a collection produced at Canterbury does not at all seem surprising if it concerned pilgrims and was arbitrated by the pope's representative. It perhaps also explains why twelfth-century commentators ignored the viking raids in favour of referring to attacks on English travelers. Most importantly, what all of this shows is that historians need to discuss treaties in their immediate historical context as well as in the context of diplomatic practice and treaty-making over a longer period to understand the full spectrum of possibilities.

⁸⁸ WM, *GR*, I, 364-9; Gregory VII, *Registrum II*, 5 and 18, in *MGH Epp. sel. 2.1*, ed. E. Caspar (Berlin, 1920), 130-1, 150-1 (English trans. H. E. J. Cowdrey, *The Register of Gregory VII* (Oxford, 2001), 97, 112). On travelling more generally, see also T. Reuter, 'The Insecurity of Travel in the Early and High Middle Ages: Criminals, Victims and their Medieval and Modern Observers', in idem., *Medieval Politics and Modern Mentalities*, ed. J. L. Nelson (Cambridge, 2006), 38-71.

⁸⁹ Die "*Honorantie Civitatis Papie*", pp. 17-19.

By setting the reconciliation of 991 into a context of European treaties, looking past but not ignoring the viking threat, and comparing what is recorded in this document to other similar treaties and diplomatic practices, it is possible to draw a number of important conclusions. Firstly, that this document is a copy of an arbitration treaty, made within ten years or so of the original. It provides the earliest evidence that arbitration could be used as a strategy to decide a dispute between two rulers and that the papacy, as the medieval West's 'supreme court' could be given the power by both parties to intervene. Secondly, that the viking raid context of the treaty is in many ways a red herring. Protecting oneself against enemies, of whatever nature but most pertinently enemies with the ability to dislodge a ruler's position, was standard diplomatic practice. More importantly, arbitrations by the papacy were only ever effected over ecclesiastical matters and the most likely such in 991 was attacks on pilgrims and merchants – that is, non-combatants. Viewing the treaty in this light, the treaty of 991 not only established a peace between the Normans and the English but also continued the long-standing practice of seeking allies against any domestic 'enemies' in Frankia. The difference in 991 was that the political landscape had altered with the change in dynasty from the Carolingians to the Capetians in 987 and the Norman leader had in some ways assumed one of those prominent positions previously held by the ancestors of Hugh Capet as dukes. There was a need to re-establish Frankish connections and submitting the dispute for papal arbitration afforded such an opportunity. The marriage between Æthelred and Emma in 1002 could similarly be seen as the confirmation of those relations following the death of Richard I in 996. After all, such marriage alliances had been the primary way in which Anglo-Frankish diplomatic links had been forged in the eighth, ninth and early tenth centuries.⁹⁰ This would also mirror the relations between the cities of Genoa and Pisa after the papal arbitration of 1133, with the peace achieved

⁹⁰ Chaplais, *English Diplomatic Practice*, pp. 32-5.

being reinforced through alliances between the two cities over the next two decades.⁹¹ Thirdly, that the treaty is unique not least in being the only treaty involving an English ruler for which a pre-Conquest manuscript has survived into modern times. However, the treaty also provides evidence of how envoys and other men, especially merchants and pilgrims, of the English king and the Norman duke could use the seal to identify themselves. This evidence is significant too at a time when the recorded use of seals both in England and Normandy is patchy.

The notification recording the reconciliation between the English king, Æthelred II, and Richard I, leader of the Normans, has often been overshadowed by the later marriage agreement between the English king and Emma of Normandy, daughter of Richard I. Twelfth-century historians looking back at the events leading to the Conquest certainly tended to view the marriage as the beginning of ‘the coming of the Normans’ and modern scholars have tended to follow suit.⁹² In fact, scholars have usually attributed the marriage in 1002 to the increased Scandinavian activity in England and the continued Norman support of this activity despite the treaty of 991. As concluded by Lesley Abrams: ‘The marriage was presumably intended by the English to bring Normandy more firmly in line with Anglo-Saxon interests, and they must at least have hoped for some degree of cooperation thereafter.’⁹³ Exactly why the English king would want to conclude another agreement with the Normans if the treaty of 991 had failed is unclear to me and it epitomizes in many ways how a focus on the viking context frequently prevents scholars from putting these early Anglo-Norman diplomatic contacts into their proper significance. Instead, viewing the treaty of 991 from a perspective of how diplomacy was conducted in the earlier Middle Ages, more generally, can offer alternative interpretations on

⁹¹ One example is the *Treaty of Portovenere* of 1149.

⁹² Henry of Huntingdon, to take one example, records no Norman activity or interactions before the marriage and the union is in his history placed in the sixth book, labelled ‘the coming of the Normans’. Henry Archdeacon of Huntingdon, *Historia Anglorum. The History of the English People*, ed. D. Greenway (Oxford, 1996), pp. 338-9.

⁹³ L. Abrams, ‘England, Normandy and Scandinavia’, in *A Companion to the Anglo-Norman World*, eds. C. Harper-Bill and E. van Houts (Woodbridge, 2002), pp. 43-62, at 45.

the well-known history of Æthelred II's reign and beyond.