UAB
Universitat Autònoma
de Barcelona

Dipòsit digital
de documents
de la UAB

This is the **submitted version** of the journal article:

Matsukata, Fuyuko; Batts, Joshua Paul. «Get it in writing (if you can) : Regulating foreign communities in Tokugawa Japan». *Journal of World History*, Vol. 35, Num. 4 (2024), p. 513-545 DOI 10.1353/jwh.2024.a943174

This version is available at https://ddd.uab.cat/record/325410

under the terms of the IN COPYRIGHT license.

Get It in Writing (If You Can):
Regulating Foreign Communities in Tokugawa Japan

Abstract:

This article reconsiders Tokugawa Japan's foreign relations through a comparative study of the capitulations and contracts exchanged with foreigner communities. Capitulations refer to stipulations issued by Japanese authorities to regulate the presence of foreigners. Contracts refer to commercial agreements between foreign traders and their counterparts in Japan. Capitulations changed in form and content over the seventeenth century; most notably, they shifted from guaranteeing foreigners' rights and privileges to stipulating strictures and prohibitions on their presence and actions. They also changed from provisions carrying the shogun's seal to relayed transmissions of the shogun's will, put to paper (if at all) by lower-ranking officials. In contrast, commercial contracts negotiated between merchants proceeded without the shogunate's involvement. These examples in turn suggest the potential of "state letter diplomacy" as a model applicable across early modern Eurasia and less reliant on the conceptual cleavages imposed by familiar bipolar models of treaty and tribute.

Introduction

This article presents a rough sketch for reconsidering the comparative diplomatic history of premodern Eurasia, using relations between the Tokugawa shogunate and the Dutch East India Company (hereafter VOC) as a departure point.

Within much of Western scholarship, "New Diplomatic History" continues to reshape the field. This shift injected cultural inquiry into diplomatic history, a field traditionally adjacent to political history. More broadly, the discipline of history made use of nineteenth-century developments in the diplomatic sphere to help structure narratives of emerging (European) nation-states. The development of economic and social history reduced diplomatic history's footprint in the twentieth century, while the cultural turn paved the way for reevaluations of the field early in the twenty-first. Yet ideas for how best to frame premodern diplomatic history remain elusive, and welcome calls to "globalize" the field beyond the poles of Eurasia present their own conceptual challenges.[1]

Japanese historians working on the country's foreign relations have long produced research on foreign relations outside Europe in a manner distinct from the "old"

[1] One recent spark to this debate is David C. Kang's, *East Asia Before the West: Five Centuries of Trade and Tribute* (New York: Columbia University Press, 2010). Kang's work presents a few conceptual problems. The "five centuries" in question appear to end with the Opium War, but arguably the first Sino-Japanese War did more to shift the structure of relations within East Asia. In seeking Chinese wealth and markets, and plotting war to attain it, the British resembled earlier generations of "barbarians" who had long threatened China, albeit from land rather than the sea. Furthermore, juxtaposing "the West" and East Asia makes for an imperfect comparison that unhelpfully collapses geography, culture, and notions of "civilization." On the importance of the Sino-Japanese war, see Takashi Okamoto, "Shinchō no taigai chitsujo to sono hensen," in *Chūgoku no tanjō: Higashi Ajia no kindai gaikō to kokka keisei* (Nagoya: Nagoya University Press, 2017).

diplomatic history while echoing some of the issues and concerns of the "new." The absence of a web of resident ambassadors translated into investigations absent the corpus of memorandum and instructions to such officials undergirding research into early modern Europe. Instead, Japanese historians have made use of a diverse array of primary sources that have in turn produced a number of doubts regarding conventional narratives of diplomatic relations. The field has investigated the embassies sent from the Japanese archipelago to Tang China as examples of cultural exchange, considered Japanese-Ming diplomacy through the mechanism of the tally trade, and explored early Tokugawa diplomacy through extensive research into the commercial network of "red-seal ships" in the seventeenth century.

We share doubts about the "old" diplomatic history and harbor misgivings about narrating premodern external encounters through terms developed in nineteenth-century Europe. This article is especially skeptical of efforts to write a tidy global history of diplomacy premised on the oppositional relationship between the tributary system of Asia and the treaty system of the West.[2] Here the goal is to analyze diplomatic documents as opposed to diagramming diplomatic models or competing world views. In other words, rather than positing or assessing a Japanese, East Asia, or Eurasian system, we consider diplomacy through practice, action, and custom on the ground.

We define diplomacy as relations among elites and governing authorities of different countries. Diplomacy operated in conjunction with domestic policies for extracting wealth from those straddling multiple authorities' spheres of influence, and with plans for

[2] John King Fairbank, ed., *The Chinese World Order: Traditional China's Foreign Relations* (Cambridge: Harvard University Press, 1968).

controlling, overseeing, and supporting these same people. Thus, relations between rulers themselves went hand in hand with those same rulers' policies toward these communities of "straddlers"—merchants and smugglers, monks and missionaries, mercenaries and pirates, etc. Conversely, it is impossible to conceive of diplomacy in the early modern world without considering efforts by these straddlers to secure the support and protection of different polities.[3] This is distinct from a conception of diplomacy rooted in formalized relations between hegemonic figures and often abstracted into relations between the polities themselves (i.e., diplomacy between "Japan" and the "Netherlands").

Here we consider the documents the Tokugawa issued to regulate relations with these straddler communities, in particular the agents of the VOC, though other examples are present for comparison. This exploration remains preliminary, but to lay out the thesis here, at least with regards to Tokugawa Japan, capitulations and contracts between Japanese authorities and resident communities fulfilled the functions later assumed by treaties between Japan and other states. Neither capitulations nor contracts fall neatly within the purview of "diplomacy" or foreign relations as conventionally defined. Aside from the fact that they involved those straddling multiple polities (hereafter simply "foreigners" in those instances where this appellation will not cause confusion), both concepts are better categorized as tools of *domestic* governance, and thus can be regarded as constitutive elements of diplomatic history before "diplomacy" as a term and concept took hold.

[3] Fuyuko Matsukata, ed., *Kokusho ga musubu gaik*ō (Tokyo: University of Tokyo Press, 2019).

Treaties are most often envisioned as documents containing items of political and economic import agreed to between countries or their respective leaders. However, at least in the case of the Japanese archipelago, examples of treaties ratified with a foreign country or leader only appear from the middle of the nineteenth century.[4] But that does not mean that agreements or promises involving "straddlers" never existed prior to Japan's entry into an international treaty regime, and this is where capitulations and contracts come into play. We tentatively label as "capitulations" any documented agreements or promises made between a country's ruler and a community of foreigners. All other arrangements, such as those between foreigners and local merchants or officials, we refer to as "contracts." Over the seventeenth century, capitulations changed in form and content. They shifted from guaranteeing privileges to stipulating restrictions; they also shifted away from direct endorsement by the shogun. Contracts, as defined here, seem to have appeared later and proceeded without the shogunate's involvement and possibly even knowledge. These shifts and their documentary context are explained in more detail below.

We focus especially on the issue of how the personal safety, possessions and—pushing a bit further—rights of foreigners were guaranteed. Immediately, differing ways of thinking about how to provide foreign communities with such guarantees become a problem. Within a European context, the question of how to resolve trade conflicts between the Dutch and Japanese is often treated as a matter of law, but this is not an article framed in legal history or the conceptual underpinnings of law. Rather, we survey conditions on the ground by rummaging through the documents exchanged by those involved. Documents

[4] *Jōyaku* 条約, the modern Japanese "treaty," appears often but analysis of its historical significance is lacking.

such as the transit passes (通航証, *tsūkōshō*) issued by the Tokugawa shogunate controlled the movement of people and reflected the effective power of the issuing authority within their sphere of influence.

Historiography

Remarking on the relationship between the Persian Safavid dynasty and the EIC, Haneda Masashi observed that "the English understood their special privileges as a 'treaty' agreed between two 'countries,' while the Safavid Empire considered the same to be a 'grace' granted by the 'king.'" This insight is of crucial significance and informs the analysis proceeding here. In the Tokugawa, such "grace" might be the product of negotiation, but the final document took the form of stipulations issued unilaterally by the shogunate.

It is often held that three types of foreigners existed in Japan prior to the regulatory edicts of the 1630s: short-term residents, long-term residents, and those that assimilated into Japanese society. Tokugawa strictures targeted and removed the second group.[5] Building on the work of Arano Yasunori, Matsui Yōko suggested that Tokugawa authorities distinguished between "Japanese," defined as those who resided within Japan and under the rule of Japanese authorities, and "foreigners." This residence standard stemmed from the ongoing process by which all of those living in Japan were registered as members of a "house" (家).[6] But neither Arano nor Matsui mention the Tokugawa laws and documents addressed to foreigner communities.

[5] Yasunori Arano, 'The Formation of a Japanocentric World Order', *International Journal of Asian Studies* 2, no. 2 (July 2005): 185–216.
[6] Yoko Matsui, "The Legal Position of Foreigners in Nagasaki during the Edo Period," in Masashi Haneda, ed., *Asian Port Cities, 1600-1800: Local and Foreign Cultural Interactions* (Singapore: NUS Press, 2009), 24–40.

Documents related to and regulating the VOC's diplomatic activities are better known. The company's charter, granted by the National Assembly of the Dutch Republic on March 20, 1602, including the following language on concluding agreements with foreign potentates:

> Item: that the people of the abovementioned Company should be able to make alliance and conclude contracts under the name of the Stats General of the United Netherlands or the high government of them, east of the Cape the Good Hope, and in and through the strait of Magallanes, with the princes and the potentates, and to construct some fortresses over there and to appoint and dismiss independently governors, soldiers, and officers of the court and [officers for] other necessary services for conservation of the places, maintenance of good arrangement, police and judiciary…..[7]

Additionally, the *Corpus Diplomaticum,* a collection of primary sources foundational to discussing VOC diplomacy, records the words "contract," "overeenkomst," "verdrag," and "tractaat," corresponding to the English "agreement," "treaty," etc.[8] Recent scholarship on VOC diplomacy, such as that by Bhawan Buangsilp and Endo Masayuki, has touched upon the various types of agreements, contracts, and accords reached by the Company, but has given little thought to the agreements and contracts themselves.[9]

---

[7] François Valentyn Oud en nieuw Oost-Indiën,... (Amsterdam : Gerard Onder de Linden , 1724) p. 189.

[8] *Corpus Diplomaticum Neerlando-Indicum, verzameld en toegelicht door F. W. Stapel, 6 vols. ('s-Gravenhage, Martinus Nijhof, 1907-1955).*

[9] Bhawan Ruangsilp, *Dutch East India Company Merchants at the Court of Ayutthaya: Dutch Perceptions of the Thai Kingdom, c. 1604-1765* (Leiden/Boston: Brill, 2007); Masayuki Endo, "Kanbojia Oranda higashi indo geisha kan tsūshō heiwa jōyaku teiketsu (1656–57) — Kanbojia ōken to Oranda higashi indo kaisha no kōeki dokusen no kokoromi wo megutte," *Shien* 74, no. 1 (2014), 9–34.

Furthermore, neither the *Corpus Diplomaticum* nor the collection of VOC documents known as the *Contractboeken* ("contract book"), which the former relies upon, have received sufficient scholarly attention as historical sources.[10] While the editors of the *Corpus Diplomaticum* consciously selected for what they deemed to be "political" documents, the *Contractboeken* corpus in fact includes both political and commercial agreements, and thus presents a fuller picture of the myriad arrangements reached by the VOC with foreign actors. [11]

The best-known recent work on the VOC in Japan authored in English is Adam Clulow's *The Company and the Shogun.* [12] Clulow's excellent work explores seventeenth-century Japanese-Dutch relations through the lenses of diplomacy, military affairs, and the law rather than trade. However, the analysis still proceeds from an acceptance and embrace of the tribute system as an explanatory mechanism for many of the issues tackled. Further, Clulow explains *shuinjo* as "maritime passes," but this glossing provides insufficient engagement with the broader legal context and documentary context of Japanese history.

The Documentary Context within Japan

Premodern Japanese documents inhabit a context distinct from that of the *Corpus Diplomaticum*, one in which "treaty" is of less help. Today the term denotes agreements among rulers and states; as mentioned before, Japan did not enter into such agreements

[10] The Dutch East India Company archives (*De archieven van de Verenigde Oostindische Compagnie*) at the National Archives in The Hague, nos. 4777, 4779–4783, 11193–11196. Hereafter marked VOC, sources from this archived are catalogued in inventory 1.04.02.
[11] For the editors' explanation, see *Corpus Diplomaticum,* vol. 3, xvii.
[12] Adam Clulow, *The Company and the Shogun: The Dutch Encounter with Tokugawa Japan* (New York: Columbia University Press, 2014).

until the nineteenth century. We require a better means of grasping how Japanese authorities mediated relations with foreign "straddlers" operating across multiple polities. To reiterate, this article uses "capitulations" to refer to documents issued by the Tokugawa to these communities.[13] Capitulations regulated foreigners' presence in Japan by articulating rights or, conversely, stipulating prohibitions. The word might suggest "surrender" or "concession" to Anglophone readers, but the *Oxford English Dictionary* includes the following definition (2.b.): "Articles giving special immunities and privileges within a state to subjects of another state or to those of a different nationality."[14] The choice of "capitulation" stems from this function.

Conversely, "contract" refers to agreements made absent the shogun's participation, most often in the form of commercial arrangements between foreign merchants and their Japanese counterparts. The shogunate did not broker commercial contracts with foreigners; these were handled closer to the ground (i.e., in Nagasaki), and the shogunate may not have even been aware of them. Both terms, capitulations especially, streamline the evolving documentary context of the early seventeenth-century Japan. Understanding this context requires discussing the concepts of proximity and directionality.

The highest-level documents—capitulations or otherwise—within the shogunate carried the Tokugawa ruler's seal, either vermillion (朱印, *shuin*, confirming the greatest prestige) or black (黒印, *kokuin*). Especially important documents were also certified by a stylized handwritten signature (花押, *kaō*). The "vermillion-seal ships" (朱印船,

[13] In Japanese, we use *yakujō* (約条) and *keiyaku* (契約) respectively for "capitulations" and "contracts."
[14] *Oxford English Dictionary,* 2nd online edition.

shuinsen) frequenting accounts of Japan's foreign commerce at this time sailed with documents carrying the Tokugawa seal. Referred to as *shuinjō* (朱印状, "vermillion-seal documents"), these sealed documents also circulated domestically, notably in the titles issued to daimyo confirming their domain holdings each generation (領知朱印状, *ryōchi shuinjō)*. Proximity to the ruler's person conferred prestige to the document bearing his seal. This proximity became scarcer for documents foreign and domestic alike. The *shuinsen* stopped sailing, but the shogunate also curtailed its domestic use of vermillion- and black-seal documents. In time the Tokugawa issued sealed documents almost exclusively when confirming daimyo holdings, as introduced above. Foundational to the regime's legitimacy, these *ryōchi shuinjō* continued to be promulgated unabated throughout the Tokugawa period.

But this reduction in sealed documents did not presage a decline in paperwork. As the shogunate settled into its authority, memorandum (触, *fure*) and dispatches (達, *tasshi*) relayed by lower-ranking officials became the standard format for directives. These documents served in the same capacity as their sealed counterparts, but did so as a lower category of command. They were "oral" documents that recorded and forwarded the shogun's intentions to his subjects, rather than being the direct command of the hegemon himself. The character 触 (*fure)*, for example, means "to announce." Such directives were issued by the relaying administrative body within the shogunate—such as the *rōjū* (老中, "elders")—rather than the ruler himself. Notably, the vast majority of documents issued to the Dutch from the mid-seventeenth century onward adopted this format.

A change in character accompanied this shift in format. As shown below, documents issued directly by the Tokugawa to newly-arrived foreign communities in the early seventeenth century tended to guarantee their rights and privileges in Japan. The intended audiences were not just the foreigners themselves but the Japanese subjects expected to honor and uphold Tokugawa terms issued directly. These stipulations enjoyed particular force given their proximity to the hegemon; breaching them would violate the ruler's express commands. But from the mid-seventeenth century the shogunate shifted from guaranteeing foreigners' privileges to issuing restrictions on their movement and behavior. These latter documents most often came in the form of relayed, "oral" documents such as the *fure* or *tachi*. Again, this shift in the administration of foreigner communities paralleled the administration of domestic affairs. Here too, the shogunate moved from articulating the privileges of domestic subjects to regulating their conduct and behavior.

Though sealed documents drew their power from being issued directly from the top, they were often prompted by requests from below. In the decades leading up to unified rule, warrior leadership of a given region often issued injunctions or guarantees at the behest of local interests. Such injunctions, often referred to as *kinsei* (禁制) took the form of a list of provisions backed by the ruler's seal. Petitioners incentivized rulership to issue such decrees by sending payment along with their requests.[15] A similar petition and payment dynamic appears to have operated in the issuance of transit passes from southern

[15] Shōsaku Takagi, "Ransei: Taihei no yo no ura ni hisomu mono," *Rekishigaku kenkyū* 574 (November 1987), 67–79; Jōji Fujii, "Echizen ni dasareta Hideyoshi no kinsei," *Fukui-ken monjokan kenkyū kiyō* 14 (March 2017), 19–32.

Japan to the Ryukyu Kingdom (present-day Okinawa) for much of sixteenth century.[16] This petition structure continued into the Tokugawa period. In 1672, the leadership of Sendai domain confronted faltering local compliance with its directives at a time when the daimyo was still a child. Domain leaders asked for and received a Tokugawa *shuinjō* stipulating obedience from the daimyo's retainers.[17]

The documentary taxonomy extends further. For example, Tokugawa Ieyasu's famous regulations for military families, the court, and temples are known as *hatto* 法度 ("ordinances"). Japanese historians have unpacked these distinctions in depth across a variety of cases.[18] Here the salient point is that Tokugawa documentary practice is not accurately captured by the familiar discussions of "treaty" or "tribute" systems. Foreigner communities who petitioned the shogun were treated more as (pseudo-) subjects than the empowered proxies of a foreign power. Echoing domestic practice, the Tokugawa initially responded to the petitions of these new arrivals with capitulations issued in the hegemon's name guaranteeing the rights of these communities. As the presence of certain foreign communities became normalized, the shogunate shifted to "oral" directives or documents issued by proxies that restricted and regulated foreigners' residence and conduct in Japan.

---

[16] See Satoru Kuroshima, "Ryūkyū tokai shuinjō wo yomu: genbon chōsa no shoken kara," in Satoru Kuroshima and Ken'ichirō Yara, ed., *Ryukyu shiryōgaku no funade* (Tokyo: Bensei Shuppan, 2017), 324–27.

[17] Nihon rekishi gakkai, *Gaisetsu komonjogaku kinsei hen* (Tokyo: Yoshikawa Kōbunkan, 1989), 70.

[18] Discussion of *shuinjō* (pp. 13-17), *hatto* (pp. 56-77), and *furegaki* (pp. 83-100), among others can be found in Kazuhiko Kasaya, *Kinsei buke monjo no kenkyū* (Tokyo: Hosei University Press, 1998). See also Nihon rekishi gakkai, *Gaisetsu komonjogaku kinsei hen* (Tokyo: Yoshikawa Kōbunkan, 1989) and Tetsuji Ueda, "Matsumae Yoshihiro ate Hideyoshi, Ieyasu inpanjō no monjoronteki kōsatsu: Ijin he no hibun kinshi ga imi shitamono," *Hokkaido Tōhokushi kenkyū* 10 (2014), 9–29.

In contrast, contracts regulated commercial transactions among economic actors directly involved in trading. Neither the shogun nor the Nagasaki *bugyō*, his proxy in the city, appear to have been signatories to these agreements. Nor can we assume that they were aware of contract specifics. Given the monopolistic structure of trade and relations between the shogunate and merchants, we should be careful to dismiss all influence or involvement. [19] But the shogunate's light footprint help explains the paucity of surviving documents on the Japanese side. Uninvolved in the proceedings, Japanese authorities took little stock in preserving them. In contrast, the Dutch valued and maintained these records, which explains the presence of such handwritten contracts in the *Contractboeken* and *Corpus Diplomaticum* collections.

In sum, we contend that capitulations and contracts hold more utility as signposts for understanding Tokugawa Japan's foreign relations than trying to align (pre)diplomatic practice within a treaty or tribute framework. The two pairs also represent different categorical conceptions. "Treaty" and "tribute" often describe systems; "capitulations" and "contracts" denote documents and the practices surrounding them. A generation of Japanese historians have sought systems, perhaps most famously in Arano Yasunori's elaboration of a "Japanocentric World Order."[20] But focus on a Japan-specific system came at the expense of an analysis of the on-the-ground conditions producing these documents and how they regulated relationships. The following case studies flesh out how capitulations and contracts operated and substantiate the claims made here regarding terminology, proximity, and direction.

[19] Hao Peng asserts that the Nagasaki trade bureaucratized over time. See his *Kinsei nisshin tsūshō kankeishi* (Tokyo: University of Tokyo Press, 2015), 8.
[20] Arano, "Formation."

I. Written Capitulations

To begin, we will examine a series of "capitulations" that the Tokugawa issued to the Spanish, Dutch, Portuguese, and the English. Research exists on each case study, but always within the context of a bilateral relationship. To our knowledge, this article marks one of the very few times that they have all been considered in conjunction.[21]

The Dutch

Seven years after the formation of the VOC in 1602, two Dutch ships arrived at the port of Hirado. Abraham van den Broeck and Nicolaas Puyck carried a letter from Maurice, Prince of Orange, and it is thought that they met with Ieyasu at his retirement residence in Sunpu. At this time, Ieyasu issued a reply to Maurice together with four identical *shuinjō.*[22] Of the four, only one survives into the present day, and is translated below.

> Dutch ships traveling to Japan are [given leave] to dock at any port without issue. Henceforth this provision shall be observed, [Dutch vessels] should come and go without objection, and the slightest discord [on the matter] is forbidden. As ordered here.
>
> Keichō 14.07.25 (1609) [Ieyasu's seal]
>
> Chakusu Kurûnbeike[23]

[21] Akiko Yamamoto compares documents issued to the Spanish and Portuguese in her work on the 1613 EIC *shuinjō*. See Yamamoto, "Edo shoki ni okeru nichiei kan no bōeki jōken," *Bungaku kenkyu ronshū*, vol. 16, 2002.

[22] See Eiichi Katō, *Bakuhansei kokka no keisei to gaikoku bōeki* (Tokyo: Azekura shobō, 1993), 26–27. Two passes were addressed to van den Broek and Puyck, one to François Wittert in Java, and one to Jacques Groenewegen in Patani.

[23] Archive of the Dutch East India Company in Japan (*Archief van de Nederlandse Factorij in Japan te Hirado en te Deshima*) at the National Archives in The Hague, no. 1A. Sources from this archive are catalogued in inventory 1.04.21; hereafter they will be marked NFJ. Authors' translation.

Both the VOC and Japanese authorities considered these *shuinjō* to be important documentary safeguards of the Company's privileges. Initially, the passes were sent on to the Netherlands, but in 1641, as the VOC prepared to transfer its factory to Dejima during a chill in relations with the Japanese, the passes were returned to Nagasaki and thereafter were safeguarded at the Dejima factory. A passage from the diary of the VOC factory head reveals how carefully the Nagasaki *bugyō* handled this initial *shuinjō* upon inspection in the 1640s. The Dutch account recorded the Nagasaki magistrate's reverent attitude, noting that he "ordered that [the pass] should be brought to his residence with dignity. It was followed immediately. And [when the pass was] shown [to the magistrate], His Excellency took it from the box with great respect (after he washed his hands and face and straighten his clothes), read and let us know its contents."[24]

Other known documents issued to the Dutch that similarly outlined and guaranteed their privileges include a 1617 *shuinjō* from Hidetada granting rite of passage,[25] and a missive signed by members of the *rōjū* dating to 1643 (Kan'ei 20.11.07).[26] According to the diary of the Dutch Factory head, after Tokugawa Iemitsu's death in 1651, the Nagasaki *bugyō* ordered the shogunate's Dutch translators to visit the VOC factory and examine the *shuinjō* conserved there.

> It was handed over to them [the interpreters], and after all of them washed their hands and did some ceremony beforehand, they opened the pass according to

[24]Diary entry from 1641.11.08, *Nihon kankei kaigai shiryo, Oranda shōkanchō nikki*, vol. 6 (Tokyo: Historiographical Institute the University of Tokyo, 1987), 7–8.
[25] NFJ 1B.
[26] VOC, 1158. Reproduced as the front piece illustration in vol. 8 of the *Oranda shōkanchō nikki.* See Reinier H. Hesselink, *Prisoners from Nambu: Reality and Make-Believe in Seventeenth-Century Japanese Diplomacy* (Honolulu: University of Hawai'i Press, 2002).

> their manner and read to the end, and found they were not from the last Emperor [the third shogun Iemitsu] but from two old passes from the former dead [the first two shoguns, Ieyasu and Hidetada]. They got anxious about it and wondered if it would be advisable to request another [pass] the same as that we have. They thought it strange that [we] had got none from the recently passed-away Emperor but only a pass granted from the [shogunate's] councilors to the [Dutch] chief Elseracq...[27]

From the above, we can ascertain that until this time there existed the possibility of successive shoguns issuing a *shuinjō* reconfirming the Company's privileges. Ultimately the third shogun Tokugawa Iemitsu did not do so, and the shogunate produced no new *shuinjō* for the Dutch for the rest of the Tokugawa period.

The Spanish

Japanese relations with the Spanish predate the battle of Sekigahara and Tokugawa Ieyasu's subsequent assumption of rule across the entire archipelago, but the issuance of anything that could be considered "capitulations" only occurred after the famous 1600 battle.[28] In 1602, Ieyasu issued six *chapa,* transit passes for Spanish ships coming to Japan, part of an emergent dialogue with successive governor generals in Manila to establish and regulate traffic between Japan and the Philippines.[29] A Portuguese translation of these

[27] Diary entry from 1651.12.21, *Oranda shōkanchō nikki*, vol. 12, 284.
[28] On Japanese-Spanish relations, see Ubaldo Iaccarino, *Comercio y diplomacia entre Japón y Filipinas en la era Keicho (1596-1615).* (Wiesbaden: Harrassowitz Verlag, 2017).
[29] Eiichi Katō, *Bakuhansei kokka no seiritsu to taigai kankei* (Kyoto: Shibunkaku Publishing, 1998), 117.

passes remains in the holdings of the Royal Academy of History (Real Academia de la Historia*)* in Madrid.[30]

Better-known, and still extant in Japanese, are documents issued to the Spanish later in the decade. In 1609, departing interim Governor-General Rodrigo de Vivero was on his way back to Mexico when a storm swept him ashore the coast of Kazusa Province, in present-day Chiba. He spent roughly a year in Japan, during which time both Tokugawa Ieyasu and his son Hidetada received Vivero in audience. These circumstances presented a rare opportunity for direct communication between a (former) Spanish official and the Tokugawa shogunate. When queried on the interests of the Spanish crown, Vivero, now acting as an impromptu and unofficial ambassador, presented a petition for furthering relations between the shogunate and the monarchy organized around three core components: protection for missionaries evangelizing in Japan, maintaining friendly relations with Philip III, and expelling the Dutch. Ieyasu signaled his approval of the first two, but having just guaranteed the Dutch their safety, as seen above, he declined to rescind his word at the Spaniard's request.

Continued discussion produced more concrete terms, proceeding from a combination of Vivero's three priorities and the shogunate's own decade-long interest in encouraging Spanish shipping out of the Philippines and New Spain to call on northeastern ports nearer to Edo, beyond the established southern enclaves across Kyushu. Vivero produced a finalized list of agreed provisions amounting to an informal accord, albeit one that never

[30] Katō, *Bakuhansei kokka*, 117.

went into effect.[31] Concurrently, a shogunate official produced a list of stipulations, broadly similar in content, and surviving today only in Spanish translation. Both versions outline the supply of provisions to Spanish vessels, rights of residence for the Spanish (including missionaries), and the use of a port in the Kanto. Though it is safe to conclude that the shogunate approved these provisions, neither version carried a Tokugawa seal.

However, Vivero did receive red-seal documents (朱印状, *shuinjō*) from both Ieyasu and Hidetada. This pair of comparatively short and straightforward missives are now housed in the General Archive of the Indies (Archivo General de Indias) in Seville. Hidetada's *shuinjō* reads as follows:

> Minamoto Hidetada, Barbarian-Quelling Shogun of The Country of Japan
>
> [Addresses the] secretary of the Lord of Spain, The Duque of Lerma
>
> The matter of commercial ships crossing from New Spain to Japan has been passed along to the former Governor-General of Luzon. Regardless of which port they arrive at, [vessels from New Spain] will not encounter any dissent or protest within Japan. Accordingly, [I] send five suits of armor. The friars Alonso Munoz and Luis Sotelo will speak further on the particulars.
>
> Keichō 15.05.04 (1610) [*Hidetada's seal*][32]

Hidetada's missive belies easy, and perhaps unnecessary, classification. Is this a letter to a foreign authority, a transit pass for the use of Spanish traders, or both? It is difficult to

[31] Vivero referred to these provisions as "capitulaciones." See Iku Hayakawa, "Tokugawa Ieyasu to Supein—Bibero to Bisukaino no Nihonjinkan," in *Nihon, Supein kōryūshi*, eds. Shōji Bandō et al. (Tokyo: Rengashobo Shinsha, 2010), 91.
[32] DNS 12:7, Keichō 15 (1610).05.04, p. 215. AGI, MP-ESCRITURA_CIFRA, 31.

say. Placing the issuer's name—furthermore, using the personal name "Hidetada"—and the recipient's name at the beginning of the document is but one of many peculiarities breaking the norms of a Japanese-language source. In contrast, entrusting "particulars" to messengers is common in shogunal letters from the Muromachi period onward. Presumably, the aforementioned stipulations drafted by the official supplements this letter and forms part of these particulars. Though a small detail, the mention of gifts also supports reading the document as a letter. However, the phrase "Regardless of which port they arrive at, [vessels from New Spain] will not encounter any dissent or protest within" is almost identical to phrasing used in the four sealed documents recently issued to the Dutch, and suggests a reading of the document as a *shuinjō* authorizing transit to Japan.

The *shuinjō* issued by Ieyasu earlier in 1610 exhibits a similar format.[33] Omitting any mention of gifts, it hews closer to the Dutch documents, but also makes concessions to perceived Spanish epistolary norms. The Franciscan Friar Luis Sotelo wrote of the issuance of this document in a report to the king of Spain. The friar recorded that "Furthermore, the Emperor (Ieyasu) ordered that I be asked that if in Spain the recipient's name was written at the end [of a document] as is done in Japan, or if it was placed at the beginning. When I answered that the addressee's name was read first, the emperor ordered the name to be written at the front of the letter." Ieyasu did retain the Japanese practice of addressing an underling instead of writing directly to the intended recipient. Hence Ieyasu and Hidetada alike wrote to the Duke of Lerma rather than Philip III of Spain. As noted by Sotelo "they refer to this courtesy as a *hirōjō*, and that within the writing of Japanese letters it is the most formal style, used to express deep humility. It is the format

[33] DNS 12:7, Keichō 14 (1609).12.28, p. 215. AGI, MP-ESCRITURA_ CIFRA, 30.

that retainers adopt when writing to their lords."[34] Note the contrast with the Dutch *shuinjō*, which addressed the VOC merchant directly, and at the end of the document. The documents in the Spanish case seem to assume overlapping functions, and will receive more comment below.

The English

In 1613, Jon Saris arrived in Japan as the first envoy from the English East India Company (EIC).[35] While in Japan he received documents bearing Ieyasu's seal. According to English sources, these were issued as answers to the Englishmen's "Articles" or "demaundes." Saris' journals make clear that this documentary record resulted from a process of negotiation between the English and shogunate.[36] The "demaundes" initially consisted of fourteen clauses,[37] reduced to seven after the shogunate requested their simplification.[38] After doing so, the English received a seven-article *shuinjō* in response to their petition in the ninth month of Keichō 18 (1613). Though broadly similar in content and retaining seven articles, the English translation added details and differed significantly in its ordering of information. The following paraphrasing follows the *shuinjō*.

Item. Permission to trade and exemption from any customs levies.

[34] For Sotelo's description, see Pablo Pastells, *Jū roku jū nana seiki Nihon Supein kōshōshi*, trans. Kiichi Matsuda (Tokyo: Taishukan Publishing, 1994), 193–98.
[35] Kengo Murakawa and Yoshi Ozaki, trans., *Shin ikoku sōsho 6: Seerisu Nihon tokaiki, Viruman Nihon taizaiki* (Tokyo: Yushōdo shoten, 1970), in particular the remarks by Ernest Satow in Appendix 3 and the commentary by Murakawa.
[36] Murakawa and Ozaki, *Seerisu Nihon tokaiki,* 172-73.
[37] Naojirō Murakami and Kengo Murakawa, eds., *Letters Written by the English Residents in Japan, 1611-1613* (Tokyo: Sankōsha, 1900) 104-105.
[38] Ibid., 106.

Item. A Record of all cargo is to be made and presented to the shogun.

Item. English ships damaged or endangered by inclement weather permitted to harbor at any port; necessary aid will be provided.

Item. Permission to freely establish residence and trade in Edo. English merchants free to return home at any time, and upon departure, dispense with buildings at their discretion.

Item. The assets of any English merchant who dies in Japan will be left in the care of EIC agents.

Item. Trade to be conducted free of coercion or violence.

Item. English criminals to be subject to the judgement of the EIC factory head.[39]

Of the two copies issued, one was given back in 1616 in exchange for a new *shuinjō* authorizing transit to Japan and never returned; the other is preserved in the Bodleian Library at Oxford University.[40]

The *Ikoku nikki* refers to the articles in these documents as both *shuinjō* and *hatto*. Their contents are written in Japanese script rather than formal Chinese in the assumption that Japanese people would read them. For the English, the capitulations guaranteed their privileges in Japan; the terms resulted from negotiations between themselves and the shogun, and not only outlined what the English could do but also constrained the actions of Japanese actors. However, within the Japanese context these documents recorded the

[39] For the full English translation see DNS 12:11, 459; also *The Voyage of Captain John Saris to Japan, 1613,* 138-139.
[40] Derek Massarella and Izumi K. Tytler, "The Japonian Charters: The English and Dutch Shuinjō," *Monumenta Nipponica,* 45, no. 2 (1990), 189–205.

shogun's ordinances, closer to a king's grace than a mutually agreed settlement. Two copies were issued, with instructions that one be for the use of ships crossing to Japan, and one be kept in England.

Portions of the original Japanese, especially item three, mirror phrasing adopted in the *shuinjō* authorizing transit addressed to the Spanish and Dutch, and it is clear that the articles of the *hatto* bear a connection to the *shuinjō* serving as transit passes.

Sixty years later, this document saw the light of day once more. Unable to turn a profit, the EIC conceded defeat to their Dutch rivals and departed Japan in 1623. However, by the 1670s the Company enjoyed friendly relations with the Zheng regime of Taiwan and set its sights on the Japanese market once more. Two ships, the *Experiment* and the *Return*, departed for Japan in 1671, carrying letters from the king of England addressed to the shogun. The EIC head office in London exhibited confidence in the endeavor's prospects of reopening trade with Japan, and both ships carried men qualified to serve as the head of a reestablished Japan factory. Unfortunately for the EIC, the Dutch seized the *Experiment* en route, and though the *Return* arrived in Nagasaki harbor in 1673, it never received permission to trade. This "*Return* Incident" served as an epitaph for English efforts to trade in Japan prior to the nineteenth century.[41]

The following passage is a selection a September 1671 letter drafted by the London Office and addressed to the Banten factory. London discussed reopening trade with Japan,

[41] Roger Machin and Toyoko Ikeda, "1673 nen eikokusen ritaan gō rainichi kankei shiryō," in *Experiment and Return: Documents Concerning the Japan Voyage of the English East India Company, 1671-3,* ed. Roger Machin (Tokyo: The Richard Cocks Society, 1978), Yōko Nagazumi, "Jū nana seiki kōhan no jōhō to tsūji," *Shigaku* 60, no. 4 (1991), 405-27; Naoki Kimura, "Jū nana seiki kōhan no bakuhan kenryoku to taigai jōhō — 1673 nen Ritaan gō jiken wo megutte," in *Bakuhansei kokka to higashi ajia sekai* (Tokyo Yoshikawa Kōbunkan, 2009).

referring to the articles the company received from Ieyasu earlier that century as a "contract" and "treaty" following a process of negotiation, and believed that the document guaranteed "the freedom to conduct trade in all parts of the empire of Japan."

> …wee are satisfied our vndertakings, are on cleare grounds from Articles make with the Emperour of Iapon, Our faire retirement from thence (notwithstanding the false reports as you may see by the papers hereafter mentioned) with a declaration to returne,…
>
> Wee haue caused to be transcribed the Articles, made with the Emperour of Iapon at our first entrance, & the transactions at our coming away, which wee also herewith send you, that you may the better know how to proceed, for that the articles doe graunt vs a free trade for ever, in the Empire of Iapon, & …
>
> By our article wee haue liberty to trade in all parts of the Empire of Iapon, but wee vnderstand that all Strangers, are now confined to Nankesaque,… [42]

Simon Delboe's diary records the Japanese reaction when shown the terms Ieyasu stipulated.[43] When told to produce the original red-seal document, Delboe was forced to admit that he could not do so, replying that it had been returned when the EIC withdrew from Japan in 1623.[44] Furthermore, though the London office meant to entrust the *Return* with a copy of the shogun's *shuinjō*, it had in fact only sent along a Japanese translation of the EIC's seven-article petition rather than the final Tokugawa provisions. [45]

---

[42] Machin, ed., *Experiment and Return,* 44-45, 49.
[43] Simon Delboe, *Japan Diary* entry for 1673.06.29. The original English is reproduced in Machin, *Experiment and Return,* 90–91.
[44] In fact, the document made it to England.
[45] This document, a facsimile of the Japanese text made in England, is produced as the front piece in Murakawa, *Seerisu Nihon tokaiki*.

Researchers have traditionally treated the Spanish and Dutch *shuinjō* as transit passes to Japan.[46] However, when considered in conjunction with the English experience and documentary trail, we might consider them all to be stipulations granted by the Tokugawa. Even if the English secured their privileges through negotiation, scholarship on Japanese documents suggests that the final result took the form of a shogunal ordinance. The function of these documents parallels the black-seal documents granted to the Matsumae clan charged with the defense and administration of present-day Hokkaido. The document issued to the English also resembles the format of Tokugawa *kinsei* injunctions. Thus in terms of documentary form and function, we see commonalities among the EIC documents and other *shuinjō* issued to actors foreign and domestic.

The Dutch, the Spanish, and the English were all recent arrivals to Japan. Rather than the Tokugawa proactively issuing *shuinjō* specifically to these foreign communities, it is more likely that these newcomers themselves sought to secure commitments in writing. Comparing the Dutch, Spanish, and English experiences also enable inferences about the relative strength and efficacy of their respective petitions. Though only the Dutch managed a stable, long-term presence in Japan, the English initially secured the most robust package of capitulations directly endorsed by the Tokugawa. Dutch and English alike enjoyed more success than the Spanish, due principally to the unambiguous endorsement of their backing companies and domestic governments. Vivero's presence was accidental and unofficial. However keen both he and his hosts were to further relations, trade between eastern Japan and the Spanish empire remain unrealized. In

[46] Yasunao Nakada, *Kinsei taigai kankeishi no kenkyū* (Tokyo: Yoshikawa Kōbunkan, 1984).

contrast, the Dutch and English merchants arriving to Japan embodied the trade they meant to pursue.

Differences in the Tokugawa paper trail for each case may stem from this divergence. Dutch and English merchants carried letters from the Prince of Orange and James I respectively, and Ieyasu dutifully replied to each with his own greetings and well wishes separate from the capitulations issued to the Dutch and English merchants. The shipwrecked Vivero carried no such letter, as he was never intended to sail for Japan. Thus an ad hoc, muddled opportunity for outreach produced a muddled response, and in the Spanish case alone Tokugawa stipulations seem to pull double duty, simultaneously a letter of outreach and a grant of transit.

But the Spanish case may have laid the groundwork for the more robust response secured by the English. In spirit and content, there are many commonalities between Vivero's proposals, the supplemental "particulars" drafted by the Japanese side, and the terms agreed to with Saris four years later. The references to provisions, right of residence, permission to dock at any port, and some measure of self-governance for offenses and redress all echoed earlier Tokugawa outreach with Spain (and the Dutch). Saris' more secure standing in relation to his patrons may have aided his ability to secure direct Tokugawa endorsement of a familiar package.

Established Communities – The Portuguese and Chinese

In contrast to the newcomers above, Portuguese and Chinese merchants were fixtures of Japan's trade prior to Tokugawa ascension. Neither community initially received or appeared to ask for capitulations, reflecting their entrenchment in Japan.

In the Portuguese case, the Tokugawa drafted a *shuinjō* for the first time only when it became necessary to mend a severed relationship. In 1612, Ieyasu issued a *shuinjō* to Don Nuno de Sotomayor, ambassador on behalf of the viceroy of the Portuguese Indies in Goa. Sotomayor arrived in Japan hoping to reopen the trade that had been cut off since the attack on and sinking of the Portuguese vessel *Nossa Senhora da Graça* near Nagasaki harbor three years prior.

> Regarding the envoy who has arrived from Goa wishing that black ships sail to Japan, there shall be no dissent on this matter. Regulations concerning buying and selling should be carried out in keeping with prior measures, with no discrepancies. If there be any group causing disorder, their crimes shall be dealt with, and this point should be well understood [by all].
>
> Keichō 16, Fall
>
> [*Ieyasu's seal*] Black Ship[47]

The injunction that "there shall be no dissent" (不可有異儀也, *igi aru bekarazu nari*) on the matter of ships coming to Japan is present in some form or another on stipulations issued to every European community discussed. Again, it takes the form of an injunction or stipulation issued by a ruler rather than an accord reached between parties. Here as well the document is written in Japanese rather than literary Chinese, reflecting its intention to be read, understood, and upheld by domestic audiences as well. The *shuinjō*'s reparative function is also clear, as the Tokugawa looked to restore a prior relationship.

[47] DNS 12:8, 530. Katō Eiichi has speculated on the existence of some type of precedent. See his *Bakuhansei kokka no keisei*, 106.

It was only in the wake of a breach that such a document had become necessary for the Portuguese.

Moving beyond European communities, there is a record of a *shuinjō* being issued to the Chinese trading community two decades later, in 1635. The document itself is not extent but its fate is described in the *Tsūkō ichiran,* a nineteenth-century compilation of records detailing the country's foreign intercourse.[4849] The Chinese community in Nagasaki had received a *shuinjō* stating that their appointed headmen could adjudicate matters when anyone among the resident Chinese violated Japan's "state prohibitions" (国禁, *kokkin*) or otherwise stirred up trouble. However, these headmen opted to return the document to the Nagasaki magistrate, fearing that its stewardship among a rotation of elders—elected annually—might result in its eventual loss to fire or some other mishap.[50] No corroborating source has yet been found, but the notion of electing to return such a high-level document unprompted warrants further attention.[51] But it does suggest that the Chinese community felt less attached to possessing such stipulations, perhaps because they felt secure in their position as resident foreigners engaged in trade.

We should not read too much into a document permitting Chinese to adjudicate their own affairs. It was common practice for disputes among the Japanese to be adjudicated and resolved at the local village or town level, without recourse to higher levels of authority.

---

[48] Toshiyuki Kanai, ed., *Zōho Nagasaki ryakushi,* vol. 1 (Nagasaki: Nagasaki shiyakusho, 1926), 28.
[49] Shusai Hayashi, comp., *Tsuk*ō *ichiran,* vol. 4 (Osaka Seibundō, 1967), 175.
[50] Yōko Matsui, "Kinsei Nihon ni okeru 'ikokujin' no hōteki chii: Orandajin no 'kokkin' shobun wo megutte," presentation given at a meeting of the *Rekishi to shiry*ō *no kai*, Historiographical Institute, the University of Tokyo, June 12th, 2015.
[51] The *Tsuk*ō *ichiran* was compiled at a later date, and it is possible that the Chinese community received a *shuinj*ō prior to 1635.

As such, the notion that the Chinese community would likewise attend to the matter of crimes committed by its members did not buck prevailing wisdom. Vivero and Saris' negotiations with the shogunate touched on similar matters, but to label these arrangements "extraterritoriality" would be anachronistic.

Haneda Masashi's distinction between "grace" and "treaty" regarding Persia also pertains to Japan. The recipient of a Tokugawa "treaty," was not the "country" of the Dutch Republic or even the VOC, but the Dutch merchants present in Japan. In addition, much like their Japanese counterparts, these merchants initially requested that their rights and privileges be set out in documents, and successfully secured this assurance. When the EIC attempted to reopen commerce in 1673, they believed that trade would be permitted because they held "articles" and "credence" issued by the Tokugawa valid in perpetuity. However, Europeans and Japanese held two different understandings of the document's importance. Additionally, as the seventeenth wore on, the shogunate's stipulations exhibited a shift in both form and content.

II. Capitulations Relayed Orally

During Tokugawa Iemitsu's time as shogun (1623-1651), what the Portuguese, Dutch, and Chinese treated as "admonishments," "laws," and "treaties" were either relayed to them orally or by means of documents drafted to record these oral instructions rather than to directly embed and represent Tokugawa authority. This trend in the governance of foreign communities paralleled a shift in the domestic sphere. As the shogunate's authority rose in stature, law codes and articles issued directly by the shogun to his subjects yielded to memorandum and proclamations issued through bodies such as the *rōjū*. In the case of foreigners, these relayed "oral" orders no longer outlined privileges,

thus dissipating the need to show papers (especially those backed by the shogun's seal) to any Japanese as proof of these guarantees. As a result, sources were no longer preserved or prioritized by the Japanese as they had been before. A few examples follow below.

The Portuguese

Oka Mihoko's overview of the *nanban* trade raises questions about the means of communication between Japanese authorities and Portuguese traders.[52] In 1626, new regulations were passed along to the Portuguese community via Nagasaki Magistrate Mizuno Morinobu. No Japanese-language original is extant. However, the Portuguese *Capitan-Moro* Luis Pacheco and *feitor* Joan Vas Plet appear to have signed something when accepting the regulations, and Oka maintains that the Portuguese received these regulations from the Japanese in document form. If so, was the said document a *shuinjō*? It is also possible that the Portuguese received these new instructions orally and drafted a written record themselves. In 1635, regulations were passed along orally, this time to the Portuguese community in Macao. Sources exist only for this later instance, leaving open the possibility that 1635 was in fact the first time they were issued. The contents of the 1635 oral regulations were recorded by the Portuguese as follows.

> The people from Macao must not to bring letters, chits, silver, or supplies to the missionaries who go about in these regions (i.e., Japan).

[52] Mihoko Oka, *The Namban Trade: Merchants and Missionaries in 16th and 17th Century Japan* (Brill, 2021), 214-218.

> Moreover, the padres of Macao must not to send letters, chits, or supplies to those who are in Japan, nor letters addressed to Japanese Christians nor the smallest thing concerned with trade and intercourse. [53]

According to Oka, because these orders do not exist in any Japanese-language document, there is no evidence that they were passed along to the Japanese. This in turn suggests a shift from issuing privileges to foreigners that would also need to be acknowledged by Japanese subjects to passing on targeted instructions to the specific community in question. Furthermore, to the extent that these orders appeared to be a core law regulating the Portuguese in Japan, they can be considered the forerunners to the formal, written order expelling the Portuguese from Japan in 1639 (the fifth of the so-called *sakoku* regulations).

The Dutch

In 1641, a two-article order accompanied the command for the Dutch factory to move from Hirado to the artificial island of Dejima in Nagasaki. The order stipulated that VOC ships were to arrive only in Nagasaki and conduct all trade and sales there. The second clause stated that these ships were forbidden from bringing any Christians into Japan. These orders were subsequently altered and expanded upon, and from 1659 were transmitted orally to the Dutch factory head at the time of his annual audience with the shogunate and presentation of gifts at Edo castle. As stated earlier, for the Tokugawa shogunate, the oral transmission of orders within the castle was official practice at this time, but moved away from issuing the *shuinjō* common earlier in the century. The regulations binding the Dutch continued to be adjusted and expanded until 1673, when

[53] Ibid. p. 215, as translated by Oka.

they adopted a form that held until the mid-nineteenth century.[54] Roughly summarized, the orders contained three core components: Christians were not to be brought to Japan; the Dutch were to regularly provide information on events abroad; and they were not to attack Chinese shipping.[55]

The orders do nothing to state or preserve Dutch privileges, nor were they the result of any negotiation. The *Tsūkō ichiran* refers to them variously as "laws" (御法令, *gohōrei*), "capitulations" (条約, *jōyaku*), and "articles" (御条目, *gojōmoku*); the *Tokugawa jikki* favored capitulations.[56] The Dutch adopted the phrasing "The Emperor's Orders," "conventional strictures from long ago," and "capitulation" (*capittel*), among others. Whatever the terminology, over the course of the seventeenth century Tokugawa communication with the Dutch shifted from the issuance of written documents articulating privileges to orally relaying unilateral orders and prohibitions.

The Chinese

Any connection to the 1635 *shuinjō* they returned is unclear, but in 1634 the Chinese community received a list of prohibitions similar to what follows below (as later recorded in the *Tsūkō ichiran*), and to what the Dutch would be presented with in 1641.

> Kan'ei 11 (1634) 5th Month, Prohibitions for [the Chinese community] in the port of Nagasaki in Hizen-no-kuni
>
> *Item*: Bringing Jesuits from the western seas into the country of Japan.
>
> *Item*: Transporting weapons from the country of Japan to foreign lands.

[54] Fuyuko Matsukata, *Oranda fūsetsugaki to kinsei Nihon* (Tokyo: University of Tokyo Press, 2007), 77. The regulations are also recorded in Hayashi, *Tsuk*ō *ichiran*, vol. 6, 225.
[55] Matsukata, *Oranda fūsetsugaki*, 35–46 and 76–88 for more in-depth discussion.
[56] Hayashi, *Tsuk*ō *ichiran,* vol. 6, 222–25.

Item: Bringing Japanese to foreign countries [on anything] other than the fixed number of licensed ships.

Supplement: Naturalized foreigners are to follow the [last] item.

As for the preceding three articles, the prohibitions [therein] should be strictly obeyed. If there be any transgression it will summarily be dealt with as a grave offense. To be enacted as written above.[57]

It appears that this list of prohibitions was posted on public notice boards.[58] Additionally, the cessation of all licensed Japanese shipping abroad in 1641 prompted the shogunate to issue its "three-article warning for the commercial ships of the Great Ming" (諭大明売船三章) Given the use of the character *satosu* (諭, meaning to admonish or warn) there is a good chance that these prohibitions were transmitted orally. That these sets of orders were displayed on notice boards in Nagasaki's Chinese quarter[59] demonstrates how they became edicts fundamental to the governance of the Chinese community in the city.[60]

Summary

As a rule, the foreign merchants who negotiated with local authorities and secured concessions did not have military power at their back sufficient to ensure the enforcement

[57] Hayashi, *Tsukō ichiran*, vol. 5, 307.
[58] *Kōsatsu* were primarily used to display core ordinances. See Hiroshi Harafuji, *Bakufuhō to hanhō* (Tokyo: Sobunsha, 1980), 543–594, and Hiroshi Kuroshima, "Kinsei no mura no kōsatsu," in *Daimyō ryōkoku wo aruku,* ed. Keiji Nagahara (Tokyo: Yoshikawa Kōbunkan, 1993), 300-328.
[59] Hayashi, *Tsukō ichiran*, vol. 5, 307.
[60] The edicts governing the trade with Chinese vessels at this time are discussed in Tadashi Nakamura, *Kinsei Nagasaki bōekishi no kenkyū* (Tokyo: Yoshikawa Kōbunkan, 1988), 275.

of terms. A recourse to force is only possible to imagine in special cases such as the Dutch and English East India Companies, but even for these two, the viability of military action was not a given.

But within Japan and well beyond, securing privileges from local authorities was clearly desirable, and on these occasions it is easy to imagine that some sort of standard was adopted to mediate between foreign traders and local authorities. Such arrangements, what we have labeled "capitulations," were likely widespread. Nakasuna Akinori, remarking on the Qing court's 1663 edict to the VOC authorizing trade, notes that "The VOC hoped to be issued a document carrying the [Qing] emperor's seal that guaranteed their rights. For the Company, this was a completely reasonable demand, having consistently secured edicts addressed to the Governor-General of Batavia as a guarantee of trading privileges from the Mughal Empire and the Safavid court."[61]

In Japan, from the Kan'ei era (1624–1644) onward the capitulations presented to foreigners, primarily relayed verbally, did not guarantee privileges. But this state of affairs tacitly recognized foreigners' rights to reside in the Japanese archipelago as "pseudo-vassals" within the domestic order, so long as their actions remained within the bounds of rights established earlier. Relatedly, Oka Mihoko points out that the shogunate's 1639 order expelling the Portuguese emphasized their disregard for established regulations. Rather than signifying foreigners' degrading legal standing, this shift reflects their accepted (albeit delineated) place within Japanese society.[62] Further,

[61] Akinori Nakasuna, "Niran oranda koku no chōkō," in *Chūgoku higashi ajia gaikō kōryūshi no kenkyū,* ed. Susumu Fuma (Kyoto: Kyoto University Press, 2007), 401.
[62] Fuyuko Matsukata, "Jū nana seiki nakaba, Yōroppa seiryoku no Nihonkenshi to 'kokusho,'" in *Nichiran kankeishi wo yomitoku (jō)—tsunagu hitobito,* ed. Fuyuko Matsukata (Kyoto: Rinsen Book Co., 2015).

the shift from guarantees of privileges to unilateral orders, from direct written documents to oral or relayed communication, paralleled domestic developments, and reflects the solidification of the shogunate's authority as Japan settled into its "Tokugawa Peace."

III. Contracts

Japanese-Dutch "Contracts" (1752, 1753)

Suzuki Yasuko states that "in 1752 and 1753, for the first time a trade agreement between the Japanese and the Dutch was agreed to as a result of a discussion between the two countries."[63] As she explains, "up until then, no decision on Japanese-Dutch trade had been enacted through official, mutual conversations between the two countries. The Dutch had merely been presented with the shogunate's unilateral orders and accepted them. For this reason, the fact that at this juncture (1752-53) the Netherlands and Japan drafted and decided a commercial agreement through mutual discussion was of great significance to commercial negotiations between the two countries."[64] However, this "trade agreement" is barely mentioned in Japanese sources. For example, it is not touched upon at all in the revised and expanded edition of the *Brief History of Nagasaki* (*Zōho Nagasaki ryakushi)*, published in 1926.

Japanese-Dutch trade operated as trade between mutual monopolies, with just one institution conducting trade on each side (though private trade for VOC employees also existed). Thus Suzuki's description of a contract agreed to between "both countries" is not mistaken, but these contracts differed from the treaties agreed to today. To say that they were contracts between merchant parties hits closer to the mark. Furthermore, as

[63] Yasuko Suzuki, *Kinsei nichiran bōekishi no kenkyū* (Kyoto: Shibunkaku Publishing, 2004), 405.
[64] Ibid., 404.

Suzuki herself notes, the contracts did not contain any new provisions, and instead were "limited to preserving the exchange provisions established to that point."[65]

Germain Meijlan (1785-1831) serving as the head of the Japan factory in the late 1820s when these contracts were well established. He cited "trade by contract" (*handel op contract*) as the greatest factor in regulating Japanese-Dutch commerce. According to Meijlan, "trade by contract" referred to a system for direct trade managed by the VOC—from the nineteenth century, the Dutch East Indies, in which the Dutch only carried to Japan those goods that had been requested by the Nagasaki *kaisho* (長崎会所, Nagasaki Accounting House) the previous year.[66] The quantity, quality, and sale price for these goods were decided in advance. If the imported goods did not accord with the order, the Dutch were not able to collect from the *kaisho* at the decided price. In other words, "trade by contract" featured 1) contracts; 2) orders drafted by the Japanese side; 3) determining the sale price by contract rather than bidding; and 4) price reductions when goods were substandard. Meijlan claimed that the Dutch had been pressed into "shackles" through the arrangement.[67] Many of the details of this "trade by contract" remain unknown, and more evidence is required to confirm Meijlan's outline of its structure. For example, historian Jan Feenstra Kuiper weighted the relative advantage differently, stating that "As a result of requests for all goods being passed along by an order form, the *kaisho* bore all of the risk of the exchange with the Dutch East India Company becoming its proxy."[68]

---

[65] Ibid., 405.
[66] Meijlan, German F., *Geschiedkundig Overzigt van den Handel der Europezen op Japan* (Batavia, 1833), 166-167.
[67] Ibid., 168-189.
[68] Jan Feenstra Kuiper, *Japan en de buitenwereld in de achtiende eeuw* [*Japan's Foreign Relations in the Eighteenth Century*], (The Hague: Martinus Nijhoff, 1921), 117.

Regardless, details on the "contracts" of 1752 and 1753 remain scant, and the origins of this trade by contract remain unclear.[69] But the "contracts" of 1752 and 1753 are recorded in the *Corpus Diplomaticum*.[70] Matsukata Fuyuko has previously argued that the Dutch side pressed to implement contracts.[71] In doing so, the Governor-General in Batavia prioritized the acquisition of Japanese copper. As long as the contracts enabled the Dutch factory to move a set amount of copper out of Japan, the factory was not required to pursue specific conditions regarding the goods it brought into Japan. But this tactic came at a price. The Dutch got their copper, but as Meijlan noted, they eventually became "shackled" to Japanese conditions about what to import into the country.

Japanese signatories to these contracts were translators, while Nagasaki city elders conducted the substantive negotiations. In other words, the Nagasaki Magistrate—i.e. the Tokugawa representative in the city—was not party to the negotiations, let alone the shogunate itself. It is possible that neither even knew of the existence of these contracts. The 1752 contract consists of twenty-six articles in total, three of which are paraphrased below.

> Article 1: Company business must be carried out at the residence of the current factory head. Furthermore, there will be an accurate squaring of all accounts at the house of the incoming factory head and second in command the day after all of the Company's merchandise has been offloaded, including all of the

[69] Ibid., 132-136.
[70] The 1752 and 1753 contracts are virtually identical. See NFJ 646, as well as *Corpus Diplomaticum*, vol. 5, pp. 583-589, and vol. 6. pp. 8-11.
[71] Fuyuko Matsukata, "'Keiyaku bōeki' josetsu: 18-19 seiki no nichiran motokata bōeki," *Tokyo Daigaku Nihon shigaku kenkyūshitsu kiyō bessatsu: kinsei shakaishi ronshū* (2013), 237-42.

merchandise brought over together with any remaining outstanding expenses and loans.

Article 2: The 11,000 piculs of bar copper will be given over to the Company at 12 taels 3 mace and 5 candereens per 1 picul; the previous agreed prices will be applied to the commodities that the Company has carried to Japan.

Article 12: The Company's business is to be conducted during the day, such that the nights be a time for rest.[72]

As the selected articles show, the contract contained provisions outlining the fundamentals of trade itself (Article 2) as well as labor conditions (Articles 1 & 12).

A provisional review of the fifteen *Corpus Diplomaticum* documents relating to Japan reveals a variety of decrees aside from the *shuinjō* that the VOC received from the shogun, including orders that the Dutch received from the Nagasaki Magistrate.[73] These will be a topic of future research.

In the trade with China as well, we see a similar sort of "contract," as introduced in the work of Hao Peng.[74] From the mid-eighteenth century, gold and silver began being imported into Nagasaki, and as a result, "agreements" or "provisions" related to the importation into Japan of Chinese silver (1762) and Western gold coins (1764) were put into effect. Both were the result of discussions between local Chinese figures and the Nagasaki *kaisho*, resembling the agreements reached with the Dutch.

---

[72] Excerpted from *Corpus Diplomaticum*, vol. 5, pp. 583-589. The translation here has been made with guidance from Isabel van Daalen. 1 tael = 10 mace = 100 candareens.
[73] The fifteen are *Corpus Diplomaticum,* docs. 31, 40, 72, 88, 135, 139, 160, 201, 206, 712, 745, 845, 861, 946, and 953.
[74] Peng, *nisshin tsūshō kankei shi.*

Summary

The "contracts" discussed here were negotiated terms—that is, items agreed to as part of a commercial transaction—between merchants. That being said, since the parties on both sides were commercial entities enjoying monopoly and monopsony privileges, the contracts between them can also be viewed as promised made between two "countries." Such conditions held between the VOC (and later, the Dutch East Indies) and the Nagasaki *kaisho*, as well as the *kaisho* and the Chinese merchant association. Examples of monopoly abound in the trade carried out in and around the Japanese islands prior to the nineteenth century. The Muromachi shogunate, and later certain temples and daimyo, monopolized the tally trade with Ming China. The Sō clan of Tsushima domain monopolized early modern trade with Choseon Korea. Of course, commercial actors such as *wak*ō bands and the Tokugawa shogun's red-seal ships operated outside this framework, but without a doubt, commercial monopolies existed as a means to draw out a profit from long-distance trade and overcome the substantial shipping costs that it imposed.

Conclusion

Before offering some concluding thoughts, we summarize this article's central claims. At the beginning of the seventeenth century Tokugawa authorities guaranteed the privileges of foreign communities through *shuinjō* from the ruler, but halted the issuance of these letters in the mid-seventeenth century. Instead, the shogunate issued orders laying out the conditions for continuing to permit foreigners in the country, often relaying these orders orally. The initial capitulations issued to foreigners came at a time when these communities' presence and residence in the archipelago remained insecure and uncertain. Theft and murder remained live possibilities, and for this reason the shogunate issued

documents guaranteeing foreigners' privileges in Japan. However, as their continued residence became part of the status quo, the shogunate shifted to unilateral oral communication.[75]

Insecurity and uncertainty did not just trouble foreigners; it also occupied a Tokugawa administration that only recently assumed rule over the archipelago. This transition formed part of the shift from the uncertain authority of earlier periods to the stabilized authority of the early modern era. Foreigner communities present prior to Tokugawa ascension did not receive written assurances of their rights. Chinese traders only received such documents in the Kan'ei era, and even then, they soon returned them, evidently because they did not view written assurances as necessary. The Portuguese, whose presence in Japan also predated the Tokugawa, received written stipulations only after a disruption in trade.

While the disappearance of written privileges is evidence of foreigners' presence becoming the norm, it also reflects the shogunate cementing its authority. Certifying documents became less important for foreigners and unnecessary for the Tokugawa. If we posit that foreigners were treated more as "pseudo-subjects," then it was a phenomenon that occurred in parallel to the transformation of the archipelago's residents into Tokugawa subjects. To adopt starker phrasing, for the Tokugawa administration, there were only "allies" (who could be mobilized in times of war, labelled "subjects" above) and "enemies." Thus, the documents bestowed upon the foreign residents were

[75] The shogunate likely issued "warnings" (諭書) specifically when it expected foreign communities to act as diplomatic channels; an idea that will be explored in future work.

penned in Japanese as opposed to literary Chinese, suggesting an "internal" function, and were articles, and later, admonishments, mediating domestic affairs.

The English thought the letter guaranteed trade in perpetuity. Europeans, far from their native land and residing in foreign countries for years at a time, sought written proof of their rights and privileges. It is not surprising that they tried to obtained such assurances, nor is it surprising that when successful, they held outsized expectations about the efficacy of what they had procured. This contrasts with the Chinese community's return of the documents issued to them.[76]

Meanwhile, with regards to the various conditions surrounding trade, only in the mid eighteenth century do we see for the first time the adoption of contracts predicated on the consensus of both parties. At that time, because trade took the form of a monopoly for both the Japanese and the Dutch, contracts between monopoly merchant institutions can also be said to have functioned as if they were decisions reached between both countries. In these instances, differences in perception appear between the Dutch and the Japanese: the former intently pressing for some form of written contract (and thereby inadvertently fettering themselves to it), and the latter—or at least Japanese authorities—consistently appearing less involved and concerned.

Additionally, if trade oprerated via capitulations and contracts, then the question of why and how commercial treaties became necessary requires further investigation.[77] A search

[76] For a recent work exploring contemporary European understandings of their activities in Asia see, Adam Clulow, *Amboina: Fear and Conspiracy on the Edge of Empire* (New York, Columbia University Press, 2019), particularly Chapter 4.
[77] Isamu Okada, et al., eds., *Rekishigaku jiten 7—sensō to gaikō* (Tokyo: Kōbundō Publishers, 1999) contains entries on peace treaties and non-aggression pacts but makes no mention of either commercial or transit treaties.

of the treaties listed among the documents of the Staten General in the seventeenth and eighteenth centuries is suggestive. Peace treaties appear throughout this collection, but "commercial treaties," while present in the seventeenth century, truly begin to spread from the mid-eighteenth century. [78] This represents a selection solely from the documents accessed up until now, and further investigation is clearly necessary. However, this brief search suggests that commercial treaties became necessary through a specific set of circumstances at a particular time and place.

The first commercial treaty signed by "Japan" was the 1858 Treaty of Amity and Commerce between the United States and Japan (Jpn. 日米修好通商条約, *Nichibei shūkō tsūshō jōyaku*). We might posit that commercial treaties became necessary as a result of the collapse of monopoly trade. Continuing on from the ideas in this article, the treaty with the Americans relaxed the restrictions on those countries (here, just Chinese and Dutch agents, both of which enjoyed monopoly and monopsony status) heretofore permitted to trade solely via the Nagasaki *kaisho.* The treaty form also presented a system whereby countries collected customs duties on all manner of goods as a means of extracting a profit from trade. The Ansei Five-Power Treaties agreed to with the United States, United Kingdom, Russia, Netherlands, and France in 1858 are commonly referred to as the "unequal treaties."[79] At the heart of their inequality, as the explanation goes, was

[78] Specifically, the materials catalogued in inventory 1.01.02 at the National Archives in The Hague.

[79] See Chapter 4, "Fubyōdō jōyaku sekai taisei to ahen sensō," in Masato Miyachi, *Bakumatsu ishin henkakushi (jō)* (Tokyo: Iwanami shoten, 2012), 39–52. For the origins of the discourse on "unequal treaties," see Yasunori Arano, "Kindaika suru Nihon," in *Nihon no taigai kankei 7 — Kindaika suru Nihon,* ed. Yasunori Arano et al. (Tokyo: Yoshikawa Kōbunkan, 2012), 23 as well as Hiroshi Mitani, "Jū kyū seiki ni okeru higashi ajia kokusai chitsujo no tankan — jōyaku taisei wo 'fubyōdō' to kukuru no ha tekisetsu ka," *Higashi ajia kindaishi* 13 (2010), 1-11.

Japan's forfeiture of sovereignty over its own customs rates and the foreign powers' right to extraterritoriality. However, Tokugawa authorities never conceived of the idea of collecting customs, and lacked the ability to do so.[80] They did not possess or pursue customs sovereignty to begin with.

These circumstances in turn connect to the question of how authorities profited from foreign trade. The matter clearly requires further investigation. A related issue is the potential connection between the VOC's military capacity and the various agreements it secured, a topic not discussed here. In particular, there is the question of how the "capitulations" highlighted here, in the absence of a military threat, compare to those instances in which military power compelled some sort of agreement.

Returning to Haneda Masashi's distinction between a king's grace and a treaty between countries, there remains the question of what accounts for the primacy of one or the other as a means of engagement. After distinguishing between the two, Haneda offered his own appraisal: "…the English held that any treaty countries agreed to had to be respected and protected, even if the king or his administration turned over. This argument assumed the existence of a sovereign nation-state."[81] But is the terminology of the "nation-state" truly the only means to address the conceptual gap between a ruler's grace and an agreed treaty? Even if the notion offers some clarity, we should resist the temptation to explain global events solely by recourse to a concept born out of European history. Instead, we

[80] It would be difficult to collect such revenue without maintaining firm, direct control of the ports and surrounding areas. Authorities from Matsumae domain attempted to collect transit tolls from Japanese merchants crossing into Ezo, but this may be the only example of something resembling customs collection from the Edo period.
[81] Masashi Haneda, *Higashi indo kaisha to ajia no umi* (Tokyo: Kodansha Ltd., 2007), 204–206.

might carry on by pursuing explanations rooted in the choices of the people present at the time in question.

In the case of Tokugawa Japan, capitulations and contracts, rather than treaties and tribute are better means to explore the perspective of the parties involved and the communicative practices that mediated relations between them. Newcomers sought assurances, and early Tokugawa leadership sought to provide them. As the presence of certain communities become assumed, Japanese rulership focused attention on regulating their actions rather than assuring their presence. Relations remained unilateral and top-down. The Dutch, for example, attended the shogun each year, a requirement that reinforced hierarchical relations and required various forms of gift or tribute. But domestic actors were saddled by similar requirements. The story is thus less the construction of a tributary network of foreign relations—juxtaposed against the treaties developing elsewhere—as it is the story of rendering foreign communities legible to domestic rulers. Capitulations and contracts facilitated that legibility, and did so responsively, their format, content, and delivery shifting to meet the needs of Tokugawa authorities and the "straddlers" on their shores.