

A Note on Han Law

Wallace Johnson
The University of Kansas

The scholar-official Liu Shao 劉劭 (邵) (fl. A.D. 176-250) who is perhaps best known for his book *The Study of Human Abilities* (*Ren wu zhi* 人物志),¹ also had a great interest in law. He was one of the authors of the Wei 魏 dynasty (A.D. 220-265) law code, *The New Laws* (*Xin li* 新律) and wrote other books on law as well.² Unfortunately, none of them have survived. But the “Legal Treatise” chapter of *The History of the Jin Dynasty* (*Jin shu, xing-fa zhi* 晉書, 刑法志) contains a part of his Prefatory Review (*xülie* 序略) to the *Wei Statutes* (*Wei li* 魏律). Valuable information is given there on Han 漢 dynasty (206 B.C.-A.D. 220) law and A.F. P. Hulsewé translates the relevant passages and discusses them at length in his book, *Remnants of Han Law*, Vol. I.³

One of these statutes is entitled *chu mai cheng* 出賣呈.⁴ What this particular phrase means has puzzled scholars over the centuries. In modern times Shen Jiaben 沈家本 (A.D. 1840-1913) has translated it as “standards for selling.”⁵ Cheng Shude 程樹德 (A.D. 1877-1944) states that Shen did not understand the phrase but offers no translation of his own.⁶ Hulsewé points out that “standards for selling” is an unacceptable translation for a statute that occurs in the section of *The Han Code* covering Standards for the Composition (of Judgments) (*Ju li* 具律), but candidly says that he himself cannot explain the term.⁷ Heuser, some 30 years after Hulsewé, repeats Shen’s translation without

¹ J.K. Shryock, tr. *The Study of Human Abilities*. New Haven, Conn: American Oriental Society, 1937. The book also includes a translation of Liu’s biography from ch. 21 of *The Wei History* (*Wei zhi* 魏志), as well as a discussion of the text.

² His biography mentions a *Treatise on Law* (*Fa lun* 法論), a *General Treatise on Law* (*Lü lüe lun* 律略論) and other works.

³ A.F.P Hulsewé, *Remnants of Han Law: Vol. 1*. Leiden: E. J. Brill, 1955, p. 33ff. A complete translation of the Chin legal treatise can be found in Robert Heuser, *Das Rechtskapitel im Jin-Shu: Ein Beitrag zur Kenntnis des Rechts in frühen chinesischen Kaiserreich*. München: J. Schweitzer Verlag, 1987. This passage is found on p. 87.

⁴ Hulsewé, *Remnants*, p. 34.

⁵ Shen Jiaben 沈家本, *Shen Qiyi xiansheng yishu, jiabian* 沈寄篻先生遺書, 甲編 (Bequeathed Writings of Mr. Shen Qiyi [Shen Jiaben], First Series). Taipei: Wen-hai chu-ban she, 1964 reprint, vol. II, p. 678..

⁶ Cheng Shude 程樹德, *Jiuchao li kao* 九朝律考 (Research on Law during the Nine Dynasties). Shanghai: The Commercial Press, 1927, p. 70.

⁷ Hulsewé, *Remnants*, p. 34.

making any reply to Cheng's statement or Hulsewé's argument. Heuser further adds, without any textual basis, that the selling of documents is for one's own benefit.⁸

It may seem presumptuous of me, no expert of Han law, to attempt a translation of my own. Nevertheless, it puts me in good company. Hence I propose the following solution. The meaning of the last character *cheng* 呈 is clear. As Hulsewé says, it means 'standards.' It is the first two characters that are the problem—standards for what? I believe that the character *mai* 賣 was written for the character *shu* 贖, that is, the radical *bei* 貝 was left out. It may be that this was a personal idiosyncrasy on Liu's part, was simply a mistake, or perhaps the sound violated a name taboo. The three characters *mai* 買, *mai* 賣, and *shu* 贖 all have the same origin.⁹ Further, this would not be the first time that one form had been substituted for another. In a bronze inscription dating from the Western Zhou 西周 period (1045-771 B.C), 賣 is written for 贖.¹⁰ And on one of the bamboo strips found in the grave of the minor official Xi 喜 at Shui-hu di 睡虎地, dating from 217 B.C., 買 is written for 賣.¹¹

If the character is, in fact, *shu*, it is instantly understandable. *Shu* means to redeem punishment by payment of some kind. References to redemption occur quite often in early Chinese texts in contexts where punishment is discussed. We also know that allowing redemption of punishment was a part of Han law.¹² But the question is not simply about the character *shu* but its use together with the character *chu*. The two together, I believe, are an abbreviation for the phrase *chu jin yi shu xing* 出金以贖刑. An example of the use of this five character phrase is found in Kong Anguo's (孔安國 156-74 B.C.) commentary on the phrase 金作贖刑 in the "Shun dian" 舜典 chapter of the *Book of Documents* (*Shujing* 書經).¹³ Thus we have a pair of two character phrases that are linked together by the character *yi* 以. Putting the first characters of phrases together for purposes of a title or other use is very common in Chinese, both classical and modern. The word 'standards' at the end of the phrase indicates that more than one statute is covered under this rubric. So I submit that the correct translation of the phrase 出賣(贖)呈 is

⁸ Heuser, *Rechtskapitel*, p. 92. His translation reads: "(Vorschriften) über das Veräußern von Dokumenten zum eigenen Vorteil."

⁹ Bernhard Karlgren, *Grammatica Serica Recensa*. no. 1023. Stockholm: BMFEA Reprint, 1957.

¹⁰ See Henri Maspero, "Le Serment dans la procedure judiciaire de la Chine antique," *Mélanges chinois et bouddhiques* 3 (1934-5), pp. 272-5. Another translation of this inscription with copious notes is found in Laura Skosey, "The Legal System and Legal Tradition of the Western Zhou (ca. 1045-771 B.C.E.," Ph.D. Thesis, University of Chicago, 1996, pp. 350 ff. See in particular page 350, note 101 where there is a very lucid discussion of the relationship between the three characters.

¹¹ Hulsewé, *Remnants of Ch'in Law*. Leiden: E. J. Brill, 1985, p.53.

¹² See the discussion in Hulsewé, *Remnants*, pp. 205-14.

¹³ 書經, 舜典. Taipei: Yi-wen Book Company, n.d., p. 40.

'Standards for Determining the Amount of Copper Used to Redeem Punishment.' This fits very well into a section on deciding punishment.