

NOBORU NIIDA

MASAO FUKUSHIMA

I

“Professor Noboru Niida, Emeritus Professor of Oriental Laws in the University of Tokyo, . . . was the most eminent living authority of the history of Chinese institutions, and had a strong claim to be considered the greatest historian of China of this generation.” Thus begins the long obituary of Dr. Noboru Niida in *The London Times*, at the end of which the writer touches on Dr. Niida’s character and concludes as follows. “A scholar of profound learning and frightening erudition, as a person he was kind, modest, simple and unaffected, and will be remembered with gratitude by many British and other scholars whom he helped and advised.” Those who were directly acquainted with his personality and his scholarship will surely agree with these words. His forty years of academic life were peaceful and uneventful, a matter in which he seems to contrast with such scholars as the great French sinologist Henri Maspero, whose son was arrested for participation in the Resistance, and he himself consequently met a tragic end in a concentration camp in Germany, and Professor Yanaihara, who boldly criticized Japanese colonial policy and was persecuted by the government for his faith and his writings. The age in which he lived, however, was an age of turmoil in East Asia, an age in which Japan invaded China while at home the power of militarism and secret police vented its fury and liberty of thought and learning were infringed to an extreme degree. He loved China, and, being afforded the opportunity, he travelled over China some number of times. When the Greater East Asia War came he was bombed by the Americans, and lost many of the manuscripts of his works and much precious historical source material. Again, the shock of defeat on the one hand and the great political changes on the Chinese continent on the other had a serious effect on his researches. As a true scholar who loved his country and loved China he responded to these historical changes and went on to establish his faith regarding the future of Asia. Although by no means of a sensitive nature he was thorough, and it was his invariable rule to look at the things in the world around him straight and honestly, and in this way to arrive in his own time at settled views to which he thereafter remained faithful in his conduct.

II

Noboru Niida was born in Sendai in 1904, the third son of Zenzaburō Kanno, a judicial official. Passing through Matsumoto High School he entered the Faculty of Law in Tokyo Imperial University in 1925. He was possessed of some interest in the classical scriptures of China from his High School days, and it is said that he earned the nickname "Mencius." After entering the university he conceived an interest in the ancient literature of China, a literature which serves as an avenue to studies of ancient Chinese law, and he began specialized studies of an advanced order. Dr. Kaoru Nakada, professor of the History of Law in the Faculty of Law in the same university, a scholar who possessed a profound knowledge of early German law, who had analytically elucidated Asian law in Japan and China and completed a number of epoch-making works, and who had also produced from this basis a large number of excellent legal historians, was astonished to learn that Niida had such a love of ancient Chinese law and was already carrying on specialized studies of an advanced order. Unaided, Niida studied the published literature regarding ancient Chinese bronze inscriptions, and contributed an article on the subject to a students' journal dealing with this field. The article dealt with ancient ideas of law with the help of an analysis of the ancient Chinese characters.

On the other hand, during his last year as a student of Tokyo Imperial University he served as a Settler at the Imperial University Settlement. This settlement was set up in 1925 on the model of Toynbee Hall in London, and had a house in a slum quarter in Tokyo's east side. The leader was the progressive Professor Gentarō Suehiro, and the settlers were all students of Tokyo Imperial University, some of them destined to become Communists in later life, some government officers, and some capitalists. The work carried on by the Settlement included university extension work such as workers' education and citizens' education, but Niida chose legal advice work. Among the students of the same class as Niida taking part in this group was the present Chief Prosecutor, Yoshitugu Baba, while among his juniors were Masao Fukushima, later to become his colleague, and the famous jurist and advocate, Michitaka Kainō. The variety of ideologies current in the Settlement covered an extremely wide range. At this time it cannot be said that Niida had very much interest in political and social questions. But in the course of dealing with the legal problems brought to him by the poor citizens he learned that in actual society the law had effects entirely different from those taught in the lecture-rooms of the university, that the law always functioned to the advantage of the rich and to the disadvantage of the poor.

In 1928 Niida graduated from the university and became a research student studying the history of Chinese law under the direction of Dr. Nakada. The subject of his research was "Nihon ni okeru Tō hōsei no keiju" (The Reception of T'ang Legal Institutions in Japan) and the work published as

the results of his research was the dissertation entitled "Kodai Shina, Nihon no tochi shiyū-sei" (1929-1930). This work developed further the views of his master, Dr. Nakada, and contained the views which later came to be known as 'the Nakada-Niida theory,' but in point of having made a frontal attack on the question of the rights of ownership in the T'ang dynasty Ch'ün-t'ien system of tenure 均田制 Niida is considered to have been first in the field.

III

In the spring of 1928 the Tōhō bunka gakuin was set up. This was a research institute connected with the Foreign Ministry which was financed out of the interest of Boxer Indemnity Fund and was concerned with cultural work in relation to China. In its Charter the aims of the institute were described as those of "taking steps to study and diffuse the culture of China, and contributing to the advancement of general culture." The principal posts at the institute were occupied by professors in the sinological departments of Tokyo and Kyoto Imperial Universities. Niida's master, Dr. Nakada, became one of the principal persons connected with the institute, and on his recommendation Niida was appointed Research Assistant at the Tokyo premises of the institute. Although it may be described as a cultural institution set up under government policy the studies carried on by the institute were of an extremely orthodox and academic character, the staff being able to carry on their research freely. It was scarcely to be denied, however, that in general these studies were of a conservative character.

Niida was given the weighty subject "Tōrei no fukkyū narabini sono shitekikenkyū" (The Reconstruction of the *T'ang Ling* 唐令 and a Historical Study of It) by Dr. Nakada, his director of studies, and was ordered to complete his work in three years.

By the *T'ang Ling* is meant a famous repository of administrative law of the Chinese middle ages, a body of law placed alongside the criminal code, or *Lü* 律. It was compiled about the middle of the 7th century, and it is said that the legal system of old China was brought to completion by the compilation of the T'ang criminal and administrative codes. This is also shown by the fact that these provided the model for Japan's first state unified codes in the eighth century. The T'ang criminal code has been transmitted to modern times, but the administrative code has been lost. Dr. Nakada and his master, Dr. Michisaburō Miyazaki, had a project to reconstruct it, but it remained unfulfilled. The task which was now laid upon the youthful Niida was that of carefully looking up and criticizing the fragments of the T'ang administrative code quoted in a wide range of Chinese and Japanese documents, collecting them and setting them in order, and finally reconstructing them in the original form of the administrative code. By dint of extraordinary efforts he undertook the reconstruction of the form and content of the original text, extending his researches over several hundreds of historical documents, and succeeded in restoring 715 of the 1,546 articles in the T'ang

administrative code. Further, with this as his basis he went on to give a general account on the historical and systematic development of the Chinese administrative codes from the Han, Wei, and Six Dynasties periods (B. C. 200–A. D. 500) down to the Sung, Chin, Yüan, and Ming periods (A. D. 1000–1500). His report on his work was entitled *Tōrei shūi* and was published in 1933.

This was a great achievement and was highly appreciated by the academic world, and Niida was awarded the highest honour in the academic world, the Imperial Academy Prize for 1934. At this time his master Nakada admonished his promising pupil, "Do not become famous. Work on, never wasting a moment." Throughout his life Niida never forgot these words.

The next task which Niida set himself was "Tō-Sō hōritsushi monjo no kenkyū" (A Study of Documents for the Legal History of the T'ang and Sung Periods). This was also to be completed within three years. In comparison with the preceding subject, which had consisted mainly of textual collation, this study was of a more theoretical character. What is more, his documents for the legal history of the T'ang and Sung periods covered not only the legal codes and the regulations for their administration, but also a large number of legal documents relating to commercial or private transactions, and were further extended to include miscellanies, novels, and the drama. He attached particular importance to the source material which had been excavated on the north-western frontier of China, and he made every effort to employ these sources in his narrative. These had been discovered at Tunhuang 敦煌 at the beginning of the 20th century by Sir Aurel Stein, Paul Pelliot and others and had been sent to London and Paris, where they were preserved in museums. They were gradually set in order and photographed, and became available for use by scholars. Their contents were of considerable variety, but Niida was quick to appreciate their value as source material for legal history. Niida devoted a lifelong enthusiasm to the analysis and elucidation of such source material as the Tunhuang documents and the Turfan 土魯蕃 documents discovered by Count Ōtani's expeditions.

Further, the department of law dealt with in this study was that of private law. Herein is displayed the position of his scholarly interests. That is to say, his predecessors in the study of legal history had taken as their principal objects of study the formal aspects of the mechanisms of the state, the official hierarchy, the administrative organization and the penalties prescribed in connexion with them, and they had devoted very little attention to the commercial transactions which took place among the common people in the course of actual daily life and the question of relations between persons of differing statuses, particularly in the elucidation of customary institutions. This had been the case in studies of both Chinese and Japanese legal history alike. For example, in 1889 a young American jurist John Henry Wigmore came to Japan to study the civil and commercial customary law of the Tokugawa period and had an interview with a Japanese professor who was considered one of the greatest authorities on legal history at that time, intend-

ing to ask his instruction regarding the source material for his studies. He was fated to be completely disappointed, and he has left the following account of the incident. In the study of Imperial ordinances and feudal codes he had taken a foremost part; but the customary law of the people, relating to marriage, adoption, inheritance, mortgages, tenancy, deposits, brokerage, commercial papers and the like, was for him no part of legal science, and he had very naturally never looked for any material of the sort." (J.H. Wigmore, *Materials for the Study of Private Law in Old Japan*, 1892, Part I, p. 5.) Matters had probably been improved to some degree since then. But the study of Chinese legal history was markedly conservative, and this kind of tendency continued for some time after this date. Scholars made no attempt to relate institutions to their historical and social background and thus elucidate their actual functions, but rather sought either to set down a catalogue of the forms of these institutions or to interpret them idealistically from the viewpoint of Confucian ethics.

Niida felt antipathy to this old-fashioned style of scholarship, and sought to analyse the source material of legal history from the standpoint of its social validity. At this period the influence of his master, Dr. Nakada, was overwhelmingly predominant. Dr. Nakada had made profound studies of early German law, had analysed the legal history of Japan and China with the analytic methods used by the German legal historians, and had done so with excellent results. Niida learned from Dr. Nakada the methodology of comparative studies in legal history.

Niida's second report on his work was published in 1939 under the title of *Tō-Sō hōritsu monjo no kenkyū*. The legal norms regulating commercial and individual relations among the people, sale and purchase, lease, hire, mortgage, etc., the legal norms regulating status relations, the division of the inheritance, divorce and other matters were skilfully abstracted from the various kinds of source material we have mentioned above in respect to a period extending from the beginning of the seventh century to the latter half of the thirteenth. With the help of this material a beginning was made to constructing the system of private law of this period holistically and with the legal concepts as axes. We may say that this work, too, has an epoch-making significance.

As his third task at the Tōhō bunka gakuin Niida chose "Shina chūsei shihō shi" (The History of Private Law in Mediaeval China). Here we see reflected in the title of his subject itself the mission in his academic work to which we have alluded above. His aim was that of constructing a comprehensive system of legal history for the Chinese middle ages centred on the T'ang and Sung periods, a system extending over two departments of law, the law of property and the law of persons. That is to say, taking his *Tō-Sō hōritsu monjo no kenkyū* as the groundwork and broadening the backing provided by source material, he sought to deepen his theoretical elucidation of the subject. His report was completed in 1940, but because of difficulties occasioned by the China Incident it was not published until 1942. It was entitled *Shina mibunhō shi*. Because his studies had spread over too wide a

field Niida had been obliged to limit his account to the law of persons. Nevertheless it was a work on a very large scale, a work which, while beginning from the Chinese clan system and treating of the familial relations, also dealt with slave system (*pu-ch'ü* 部曲 and *nu-pei* 奴婢) and followed up the character of the slave-owner, a work devised with the intention of extending the author's elucidation to the very bottom of the traditional Chinese social structure.

All the above-mentioned works of Niida were of great bulk, and in addition to these he published a large number of individual articles. Engaging in violent controversies with other scholars, Niida formed his personal style of scholarship and now entered the ranks of the eminent students of Chinese legal history. For at this time he had been visited by a shock which caused him to change, and to develop, the direction of development taken by his scholarship.

IV

The Research Division of the South Manchurian Railway, founded in 1907, was a great research organization boasting extensive facilities and a large volume of published work. The first Director was Dr. Santarō Okamatsu, originally a professor in the Faculty of Law, Kyoto Imperial University, and he had already made a survey of customary law in Taiwan and compiled his famous *Taiwan shihō* (Customary Private Law of Taiwan) in six volumes (1910-1911). In South Manchuria he likewise directed a survey of customary land law, and the *Manshū kyūkan chōsa hōkoku* (Report of the Manchurian Traditional Customs Survey) in nine volumes (1912-1915) was produced by members of his Research Division.

With this tradition behind it the Research Division of the South Manchurian Railway devised in 1938 a project for a grand survey of customary legal practices to be carried out over 10 years in the northern and central regions of China, and in 1939 they began preparatory surveys in the villages. In the same year the Sixth Research Committee of the East Asia Research Institute, a semi-governmental organization, set up an Academic Sub-Committee with Dr. Saburō Yamada, Professor Emeritus of Tokyo Imperial University (later President of the Japan Academy), as chairman, and undertook a survey of rural customary practices in north China and a survey of commercial customary practices in central China. Work on the survey projects of the two organizations was carried out in collaboration, and it was arranged that in the first five years the Research Division of the South Manchurian Railway should do the on-the-spot surveys while the Academic Sub-Committee carried out the theoretical analysis of the results.

The survey of rural customary practices in north China was carried out under the direction of an excellent scholar of civil law, Shunichi Sugino-hara, while in the Academic Sub-Committee, Dr. Gentarō Suehiro, Professor in the Faculty of Law, Tokyo Imperial University, assumed the directing position

and collected a group of workers. Niida participated in Professor Suehiro's group. It goes without saying that this was because it was thought that Niida's rich store of knowledge of Chinese legal history would be of great use when applied to this survey.

Dr. Suehiro was a distinguished scholar of civil law, but with his strong interest in the sociology of law he criticized the so-called 'conceptual juristics,' the method which analyses and orders social phenomena deductively with the help of legal concepts, and in contrast to this he held that one should set out from sociological observation of these phenomena themselves, direct attention to the functions actually performed by legal norms, and pursue the search for "the living law." Thus he contended that the survey of rural customary practices in north China should be carried out in accordance with this methodology.

From this time onwards Niida came under the strong academic influence of Dr. Suehiro. This brought about a great transformation in his scholarship. However, he was not of a particularly sensitive character and his reaction to this influence revealed itself later than in the generality of scholars. It was for this reason that it was several years later that this influence began to be displayed in his academic work.

Thus the coming to realization of feelings of doubt and uneasiness in regard to his scholarship which had newly arisen in his mind dates from about the middle of 1941, when the survey reports from the South Manchurian Railway survey team began to arrive in Tokyo one after another. These consisted of a simple untreated record of the replies to the questionnaires which the survey team had passed freely to the peasants on the basis of a certain list of items for survey, Sugino-hara was also a pupil of Dr. Suehiro, and the customary practices survey team which he headed carried out Suehiro's survey policy. Niida read the survey records carefully. When he perceived in the legally normative social phenomena recorded in them that the legal norms whose existence he had confirmed by long years of study of the historical documents were still a living reality in the villages of north China, he was happy. Conversely, when new circumstances and new problems undreamt of by him were discovered to have emerged from these norms he was shocked and deeply moved, and at the same time assailed by a profound uneasiness. This was the conflict of idea and reality. In all parts of his mind the sources of authority already established there lapsed from their wonted places. He was obliged to acknowledge the basic correctness of directing the survey under the principle of Dr. Suehiro's sociology of law, and was acutely conscious that he would now have to make a fundamental re-examination of the system of Chinese legal history which he had built up by collecting and ordering legal concepts derived from historical source material. That is to say, he would have to follow up the internal and lawful inter-connexions of these facts of legal history. On this point we will explain in details later.

We may add that the fact that apart from Dr. Suehiro the scholars taking

part in the survey, notably Yoshitarō Hirano, had a strong tendency to carry on their studies from the socio-economic standpoint been a stimulus impelling Niida to adopt a new direction in the development of his studies.

This survey of actual conditions in north China villages carried out by the Research Division of the South Manchurian Railway was edited and published after the war by the efforts of several of those connected with the survey, Niida acting as their representative (six volumes, 1952-1958). *The Times* obituary which we have already quoted speaks of it as "perhaps the best field survey ever made in China." Recently this source material has begun to be analysed and elucidated by American economists.

V

In January, 1942, Niida was appointed Professor of Tokyo Imperial University and was attached to the newly established Institute of Oriental Culture. This was after the beginning of the Greater East Asia War, and the motive in founding this institution may be said to have been a matter of the national policy of that time. Yet this Institute, the first director of which was Dr. Enkū Uno, a student of comparative religion, was able to enjoy academic freedom under the principle of the autonomous administration of university foundations. From this time until he reached retiral age in 1964 Niida worked at this Institute, and for four years was its Director. The atmosphere of the Institute was comparatively free, and Niida's unfeigning and kindly character inspired his colleagues with enthusiasm for their researches, and was a force contributing to the strengthening of co-operation.

The first subject which Niida set himself at the Institute was the study of the Chinese guilds. Further, he determined to carry out this study with some admixture of the methods for on-the-spot surveys used in the survey of rural customary practices in north China which we have mentioned above. For this purpose he went on detachment to China, particularly to Peking, in 1943 and 1944, being in China for three months on each occasion. In this way he came to undertake surveys of the artisan and merchant guilds in the city of Peking. As Niida was not at home in the Chinese language he had Seiji Imabori as his assistant and many hearings took place at meeting-rooms, trade associations, etc., on which occasions he collected as many calligraphic inscriptions, scrolls, and other local source material as he could obtain. According to Imabori, who later became an excellent Chinese historian as a professor of Hiroshima University, these surveys "are of historic value because they represent the state of the guilds on the very eve of the Liberation." The method which Niida employed was that of "studying all present states by tracing them back into the past, while at the same time using all old records in the service of an understanding of the present." In this way the method employed by Niida in his surveys of the Chinese guilds broke through the impasse which had been reached by the methods hitherto employed in studies of the guilds by European and Japanese scholars.

After this survey of the guilds Japan met her first defeat in history. The authority of the military despotism crumbled, but under conditions of near-starvation people felt deprived of their spiritual supports and sense of direction. However, the granting of an unprecedented degree of freedom of thought gave bright hopes to the world of learning. On the other hand, an unprecedented thirst for knowledge welled up among the broad masses of the Japanese people.

Niida spent the several years of the dark age of fascism with grave thoughts. He did so in a dual sense, both because the oppressive politics of the times, and because of the shock which he received from the Suehiro sociology of law and the field survey of the Research Division of the South Manchurian Railway. He described this time as the only slump period in his life. For practically ten years he did not publish a single book.

We may say that the defeat caused yet another new vista to open up before Niida. He confessed that having seen "the authoritarianism of Japanese state society collapse with a great roar," he was moved "by this severe shock to attempt a re-examination of the historical questions which I had built up for myself." These acutely felt sentiments he published frankly under the title of "Tōyō bunka kenkyū no kadai to hōhō" (The Tasks and Methods for Studies of Oriental Culture), 1948. This deeply affecting piece of writing was printed as a postface to the second volume of the *Tōyō bunka kōza* (Symposium on Oriental Culture), the shorthand record of a series of public lectures delivered in Tokyo University.

The series of public lectures on Oriental Culture were given by the Institute of Oriental Culture, Tokyo University. They began in February, 1946, afterwards being held every Saturday afternoon in a lecture-room in Tokyo University, and more than sixty lectures were given up to 1948. About one hundred students and citizens, starved of knowledge, eagerly listened to each lecture, and the lecturers for their part, too, expounded their views to them with passion. Professor Kōji Iizuka, a human geographer and Niida's colleague, approaching his subject in the broad perspective of world history, was the most positive in these lecturing activities, Niida, too, took his place on the rostrum three times. At first Niida took the guilds as his subject, but later he spoke more extensively on "Tōyō-teki shakai ronri" (The Character of the Logic of Oriental Society), and in the course of time he came to criticize and examine the actual politics of Japan, that is, the actual social consciousness of Japan, along with that of China, as being a question related to the destiny of the whole Asia. We have reason for believing that in Niida Iizuka's impulse had a catalytic effect on the development of views which had long been maturing within his mind.

Further, Niida was acutely conscious that studies of the history of Chinese law must be carried on by following out the traditions of the past and bringing these studies into the world of the present day. Consequently, he came to devote much attention to the Chinese Revolution from the times of Sun Yat-sen onward, and in particular to the New People's Democratic

Revolution led by Mao Tse-tung. We will notice that the survey of Chinese rural customary practices and the surveys of the artisan and merchant guilds of Peking were carried out in north China of the very eve of this Revolution. Although Niida did not envisage the coming change at that time, he could easily comprehend what had come. Thus he was also a positive participant in the foundation of the Society for the study of contemporary China in 1948.

In the eyes of a certain section of scholars of the older type, this attitude on the part of Niida, the historian of Chinese law, was unacceptable as being a charlatan progressivism which seeks to curry favour with the changing times. One senior authority in Chinese history censured him publicly.

Nevertheless, Niida's position remained unshaken. Later he wrote as follows: "History does not exist only in the past. The present and the future lie within the development of history. My view of history is linked to the present, nay, it takes the present as its starting-point and goes forward to the future. If we omit consideration of the question of this second point we will be unable to attain a satisfactory understanding of Chinese history—of the history of the old law of China which has within it a mode of being peculiar to China itself. Indeed, it is within the change, the negation of the past which has occurred in New China that we can attain a consequential understanding of the Old China." (Introduction to the revised and enlarged edition of *Chūgoku hōseishi*, 1963.) In this way his major interest came to be devoted to the change in China, that is, to the negation of Old China and the construction of New China. He was particularly interested in the new marriage law. He studied not only the Marriage Law of the People's Republic of China of 1950, but went back to the 1930's to study the marriage laws of the Chinese Soviets and the areas of China ruled by the Communist Party during the anti-Japanese war, and he introduced these to the public. In them he perceived that the marriage customs of Old China had been overthrown and a new morality of marriage built up in their place, and he convinced himself that this could not be understood unless one related it to the totality of Chinese political institutions, or, in other words, he convinced himself that the Revolution was embodied in it. In the field of studies of modern Chinese law alone his contributions are outstanding. In particular, his studies of marriage law are unique in that they proceed from a profound knowledge of traditional institutions.

VI

The first books which Niida published after the war were *Chūgoku no shakai to girudo*, 1951, and *Chūgoku no nōson kazoku*, 1952. Both were products of his period of self-examination and revision, a period full of affliction which extended from the middle of the Greater East Asia War until after its conclusion, and we find in them evidences of the author's most strenuous efforts. Again, both are reports on surveys in which Niida personally participated or

engaged, the survey of Chinese rural customary practices and the surveys of the Peking artisan and merchant guilds. Since we have already said something about the former work we may now give some account of the latter. A few days before his thinking powers ceased in death, Niida composed the preface to the third edition of this work while in London, and in it he wrote, "In broad terms this book is significant for two reasons. Firstly, there is the fact that in the course of my academic career I now stand at a turning-point in my studies, and this book displays the great change which has taken place in my way of viewing history, my way of understanding law. Secondly, there is the fact that this book deals with the Chinese rural family on the eve of the Chinese Revolution under conditions of the utmost stringency. This cannot be excluded when we seek to understand the development of New China." Indeed, on another occasion Niida said that in his life of scholarship no other book had caused him so much heart-searching, and that consequently it was the book which he thought of with most affection.

With his sociology of law which had given a shock to Niida and had been the occasion of a new development of his studies, Dr. Suehiro expounded his 'theory of the discontinuous front.' [*Chōsa no kompon hōshin ni tsuite* (On Basic Policy in Surveys), 1940.] "Since customary legal practices correspond to what is known as 'the living law' they exist not in a fixated and immobile form, but live in a state of flux along with actual social life. It is the things which arise in the form of discontinuous front eddies at the surface of contact between the existing social order with its traditional character and consequent fixating tendency and those powers for the formation of new society which are generated from day to day that are in very truth the real aspect of the existence of customary legal practices... While portraying the manner in which the traditional and the innovatory contend with one another, we are called upon to devote our total powers to an exact portrayal of this real aspect." This kind of theory, the so-called theory of social dynamics, was derived originally from the Austrian jurist, Eugen Ehrlich and American jurist, Roscoe Pound, but Dr. Suehiro emphasized it particularly in connexion with surveys of customary legal practices in China. Niida devoted all his energies to drawing out the precise meaning from this theory. Thus as axis-questions in customary legal practices in the Chinese rural family he took up the question on the *patria potestas* on the one hand, and on the other the question of the equal division of the inheritance or family communism. In this way he attempted a fundamental socio-economic inquiry into these questions, and published original views regarding them. The Chinese *patria potestas* has its roots in the control of family labour among the Chinese peasantry, and for this reason the ideal forms of a large number of legal relations of a familial or status character are to be elucidated from this angle. The equal division of the inheritance in China is already prescribed in the administrative law of the T'ang dynasty relating to the census (*Hu-ling*), but following this up positivistically, the *patria potestas* is further looked into in its connexions with this fact. In this way a number of new viewpoints were begotten

out of the actual life of the peasant family, and a re-examination of the theories accepted hitherto was called for. It goes without saying that for this to be done there still remained important problems requiring study. There was also no small number of scholars who were opposed to the new theses which Niida put forward. But not only did these theses utterly break in pieces the stereotyped views of the older school of Chinese legal history, but they possessed in the grounds upon which they were constructed a positivistic position in research which rejected the traditional idealistic and formalistic organization of the work and grasped the reality of peasant family life.

Next Niida followed up the development of Chinese legal thought. *Chūgoku shakai no hō to rinri*, 1954, elucidated traditional Chinese legal thought, and discovered in it the characteristic of authoritarianism. This is antithetical to the liberty and sovereignty of the individual in Western society. The sources of authoritarianism are to be found not only in the teachings of Confucius and Mencius, whose doctrines accepted the legitimacy of authoritarian power, but also in Lao Tzu and Chuang Tzu, whose thought had influence among the common people. After Chi Hsi of the Southern Sung Dynasty had completed the scholastic system of authoritarianism a rebellious tradition of egalitarian thought opposed to authoritarian power appeared for the first time under the Ming and Ch'ing dynasties. This, however, was still subject to limitations. Authoritarian thought repressed the rise of the social consciousness of the Chinese people and made them fit for the condition of semifeudalism-semicolonialism. This is portrayed in Lu Hsün's famous story *A-Q Cheng-chuan* with a painfulness and irony which strike to the heart. Looking at the matter in terms of legal norms we find that throughout the history of Old China the only law was a law inimical to the people, while conversely history provided no occasion for the recognition of the people's rights and liberties. That this could be overthrown only by a revolution in the true sense of the term was self-evident without need of further exposition.

Niida wrote a textbook entitled *Chūgoku hōseishi*, 1952. He wrote this book both because he was dissatisfied with the general accounts of the subject which had hitherto been published and felt it necessary that they should be emended, and because he was moved "to make provision for a new departure in these studies by showing on a total scale the location of the questions remaining for the future." Needless to say, his system and structure of Chinese legal history were of a nature different from all other general accounts of the subject, and the book summarizes succinctly the views he had reached. A further point which is worthy of note is that in the revised and enlarged edition published ten years after the appearance of the first edition four new chapters were added, among which were two entitled "Tochikaikakuhō no seiritsu to hatten" (The Institution and Development of the Land Reform Law) and "Shin-koninhō no seiritsu to hatten" (The Institution and Development of the New Marriage Law). We have already quoted from the Introduction of this revised and enlarged edition, a piece of writing which is characterized by a fierce animus. In this work Niida sought to grasp modern

Chinese law as a part of the stream of the total history of the development of Chinese law, and, furthermore, in terms of the intermediacy of the severance and rejection of the old.

In his last few years of his academic life Niida set his academic papers in order, got them ready for publication, enlarged them, and with the further addition of some new studies published them in four volumes as *Chūgoku hōseishi kenkyū*. The first volume is devoted to criminal law, the second to land law and commercial law, the third to the law of servitude and serfdom, family and village law, and the fourth to law in relation to custom and law in relation to morality. Among these, the contents of the third volume are of particular importance. It is here that Niida enters upon the subject of the comparison of the Chinese "feng-chien" with the European "feudalism," and further to this the question of the periodization of Chinese history. Niida considered that the 10th century was the boundary separating ancient slave society from mediaeval serf society in China, and thereafter he saw in the law of the Ming period in the 14th and 15th centuries a transition period during which the status difference between landlord and tenant withered away. These were the points which were most fiercely debated among post-war students of Chinese history, and while there were many who agreed with the theories of Niida and of his colleague Professor Yoshiyuki Sudō, an authority on the economic history of the Sung Dynasty, there were also some who opposed them. Nevertheless it cannot be denied that through these interchanges the theoretical level of studies of Chinese history was markedly raised.

On the other hand, Niida still kept his unchanging passion for the analysis of the historical source material excavated from the north-west frontier region of China, such as the Tunhuang documents which he had studied in his youthful days. For thirty years he had been able to observe these documents only by means of photographs. As might be expected, this was unsatisfactory, and there were also many documents in the institutions which had the safekeeping of these original sources which remained unknown to him. The eternally young passion for getting direct access to the original sources and from them gaining new insights still drove him on, and, after his retirement from the university, brought him to Europe. In 1965 he arrived in London as a visiting lecturer at the School of Oriental and African Studies of London University. Before doing so he had delivered a brilliant lecture, "Chinese Legal Institutions of the Sui and T'ang Periods and Their Influence on Surrounding East Asian Countries," before the Twelfth International Congress of Historians at Vienna.

At the School of Oriental and African Studies he lectured on "Chūgoku no hō to shakai to rekishi" (Chinese Law in Relation to Chinese Society and History), and he was scheduled to debate with the sinologists of western Europe. This, however, had to be abandoned because of his illness. Shortly before Christmas he was struck down by a cerebral haemorrhage. At this time word was brought to him that he had been made the Asahi Cultural

Award for 1966. The Award was made for his monumental work in the four volumes of *Chūgoku hōseishi kenkyū*.

Thus the hopes which Niida had cherished for many years were unfulfilled. This did not mean, however, that he had enjoyed no satisfaction. To the last day that his body enjoyed its freedom he was going daily to the British Museum and the Bibliotheque Nationale in Paris, taking the thousand-year-old documents in his hands and holding them up to the light to look at them. As he had anticipated, he could distinguish many characters which were illegible in the photographs, and he wrote to his young colleagues of the inexpressable joy he felt on solving doubts which had been with him for many years. He had promised to publish a supplement of 300 pages to his imperishable work of thirty years before, the *Tōrei shūi*, and had been preparing it for many years. There is now no hope of this being fulfilled completely. But there are a number of young scholars who, as his pupils, love and respect his memory, and they have undertaken to carry out the task which he left, using for this purpose the notes which he had written into his copy of the *Tōrei shūi*. He leaves no direct successor in the academic world. Instead, there are innumerable scholars who have benefited from his direction and assistance.

VII

In this way Niida devoted his whole life to the study of the history, including the contemporary history, of Chinese law. The sphere within the field of Chinese legal history which he opened up was of unprecedented extent, and his energetic scholarly activity produced astounding results. But since he devoted his efforts to private law he did not set his hands to the important task of elucidating the essential nature of the bureaucratic mechanisms dating from the unified empires of antiquity, but looked to his young successors to do this.

From his youth Niida loved China, and within the field of his specialism he set himself to collect all available knowledge of China. It was not merely in the academic sense, however, that he had a profound interest in China. More than anything else he rejoiced in his later years to see the Chinese which Sun Yat-sen had called some 'scattered sand,' break free from its semi-feudal and semi-colonial bounds in the Great Chinese New Democratic Revolution under the direction of Mao Tse-tung to achieve independence and sovereignty, and to dash forward to the task of building socialism. In the summer of 1959 he had his first opportunity of visiting after the liberation of the entire country, and he was deeply moved to see on every hand how the old China which he knew so thoroughly had been changed. Regarding this he said, "It used to be common to list as attributes of the Chinese national character an obedient acceptance of fate ('resignation'), a tenuous consciousness of the national state, conservatism, the absence of public spirit, and a mercenary attitude to material gain. For some time past I had felt dissatisfied

with such theories. However, there are now some who would explain the development of New China with the help of attributes of the national character which are the opposites of these. This is a question which must be looked into with reference to the historical conditions obtaining in China. To neglect such an investigation and talk of the attributes of the national character is merely to abandon one's attempt at explanation. It is all too clear how erroneous were these attributes of the national character spoken of in former days. The conditions in the China of today which have made Chinese patriotism into a true patriotism and which are making possible China's rapid development consist in the establishment of new political institutions." (In *Chūgoku no hō to shakai*, compiled by the International Association of Jurists, Tokyo, 1960, pp. 26 ff.)

Until his death he deeply loved the Chinese people, and at the same time he loved his own country, Japan. He was convinced that in order correctly to comprehend the problem of China, the first thing to be done was to reflect on the behaviour of Japan towards China in the War Period. Further, he earnestly hoped to make some contribution to friendly Sino-Japanese relations. Though he wasted no time in social activities, he spared no pains in presenting a true picture of New China to the public and in promoting cultural exchanges between Japan and China. For this reason, Japanese and Chinese scholars and people active in society who know him will unite, as *The Times* obituary says, in remembering him with gratitude.

A Short Life History

- 1904 Born in Sendai as the third son of a judicial official.
- 1925 Entered the Faculty of Law, Tokyo Imperial University, after graduating from Matsumoto High School.
- 1927 Participated in the Imperial University Settlement directed by Professors Shigetō Hozumi and Gentarō Suehiro. Engaged in legal advice work.
- 1928 Graduated from the Faculty of Law, Tokyo Imperial University. Became a Research Student studying the history of Chinese law under the direction of Professor Kaoru Nakada.
- 1929 Became Research Assistant at the Tōhō bunka gakuin, Tokyo (under direction of Dr. Nakada).
- 1934 Became member of the staff of the Tōhō bunka gakuin, Tokyo. In the same year presented his *Tōrei shūi* as his report on his studies.
- 1935 Award of the Imperial Academy Prize for the *Tōrei shūi*. In the same year went on detachment to China.
- 1937 Received the degree of Doctor of Laws for *Tō-Sō hōritsu monjo no kenkyū*.
- 1939 Appointed member of the Academic Sub-Committee of the Sixth Research Committee of the East Asian Research Institute, and began work on survey of customary legal practices in the rural areas of north China. Under the direction of Dr. Gentarō Suehiro produced the list of items for survey along with Yoshitarō Hirano, Masao Fukushima, and Michitaka Kainō. During this time became aware of new questions.
- 1940 Dr. Suehiro published *Chōsa no kompon hōshin ni tsuite*. Niida visited Manchuria and

- rural areas of north China in a party by Dr. Suchiro and including the aforementioned persons.
- 1941- Reports of on-the-spot surveys sent from the rural practices survey team of the
1944 North China Survey Office, Research Division of the South Manchurian Railway Company. Niida looked into these and received a deep impression.
- 1942 Became Professor of Tokyo Imperial University, working at the Institute of Oriental Culture. In charge of the course on History of Chinese Law.
- 1943 and 1944 On detachment in Peking for the purposes of surveying artisan and merchant guilds (three months on each occasion).
- 1945 House totally destroyed by American bombing. Apart from evacuated documentary material, lost many books and manuscripts.
- 1946 At the instance of Professor Kōji Iizuka a series of lectures on Oriental Culture given in the lecture-rooms of Tokyo University (Saturday afternoon, weekly). More than 60 lectures delivered up to 1948. Niida participated positively.
- 1947 The Congress of the Oriental Culture Study in Tokyo, Niida attended as the Chairman.
- 1949 Member of the Board of Directors of the Legal History Society (a post held until death).
- 1950 Member of the Board of Directors of the Comparative Law Society (until 1964).
- 1954 Director of the Institute of Oriental Culture, Tokyo University, until 1958.
- 1959 Visited China as a member of a delegation of jurists. Travelled in all parts of New China. In this year the first volume of *Chūgoku hōseishi kenkyū* was published.
- 1962 Symposium of sinologists on the question of contributions to studies of modern and contemporary China in Japan held by the Asia and Ford Foundations. Niida attended.
- 1963 Became Corresponding Member of the School of Oriental and African Studies, University of London.
- 1964 Retired from Tokyo University at the age of 60, becoming Professor Emeritus. In this year the four volumes of *Chūgoku hōseishi kenkyū* were completed, for which a grand celebration party was held.
- 1965 Attended the Twelfth International Congress of Historians at Vienna, and delivered a lecture. In the same year became Visiting Lecturer at the School of Oriental and African Studies, University of London. Became ill while in London. Underwent brain operation.
- 1966 Asahi Cultural Award made for the volumes of *Chūgoku hōseishi kenkyū*. Returned to Japan still in a serious condition. Entered the hospital of the Faculty of Medicine, University of Tokyo. Died 22nd June.

*A List of Selected Works**

BOOKS

- Tōrei shūi* (Collected Fragments of the T'ang Administrative Code), Tokyo, Tōhō bunka gakuin, 1933.
- Tō-Sō hōritsu monjo no kenkyū* (Studies of Legal Documents of T'ang and Sung Periods), Tokyo, Tōhō bunka gakuin, 1936.
- Shina mibunhō shi* (A History of the Law of Persons in China), Tokyo, Tōhō bunka gakuin, 1942.
- Chūgoku no shakai to girudo* (Chinese Society and the Chinese Guilds), Tokyo, Iwanami-shoten, 1951.

- Chūgoku hōseishi* (A History of Chinese Law), Tokyo, Iwanami-shoten, 1952. (Revised and enlarged edition, 1963.)
- Chūgoku no nōson kazoku* (The Chinese Rural Family), Tokyo, Tokyodaigaku shuppankai, 1952.
- Chūgoku shakai no hō to rinri* (Law and Ethics in Chinese Society), Tokyo, Kōbundō, 1954.
- Chūgoku hōseishi kenkyū* (Studies in the History of Chinese Law), 4 volumes, Tokyo, Tokyo-daigaku shuppankai: Vol. I, "Keihō" (Criminal Law), 1959; Vol. II, "Tochihō" (Land Law) and "Torihikihō" (Commercial Law), 1960; Vol. III, "Dorei-nōdohō" (The Law of Servitude and Serfdom) and "Kazoku-sonraku-hō" (Family and Village Law), 1962; Vol. IV, "Hō to kanshū" (Law in Relation to Custom) and "Hō to dōtoku" (Law in Relation to Morality), 1964.

ARTICLES

- "Kodai Shina, Nihon no tochi shiyūsei" (The Systems of Private Ownership of Land in Ancient China and Japan), *Kokka gakkai zasshi*, Vol. 43, No. 12 and Vol. 44, Nos. 2, 7, and 8. Dec., 1929, and Feb., July and Aug., 1930.
- "Kotōritsu sogi seisaku nendai-kō" (An Inquiry into the Date of Compilation of the *T'anglü Suyi*), in collaboration with Tatsumi Makino, *Tōhō gaku-hō* (Tokyo), Vol. 1, No. 2, 11, Mar., 1931.
- "Seimeishū kokommon no kenkyū" (A Study of the Development of Family Law in the Law Report *Seimeishū*), Tokyo, *Tōhō gaku-hō*, 4, Nov., 1933.
- "Tōnkō hakken Tō-Sō koseki no kenkyū" (A Study of the Census Registers of the T'ang and Sung Periods Discovered at Tunhuang), *Kokka gakkai zasshi*, Vol. 48, No. 7, July, 1934.
- "A Study of Simplified Seal-marks and Finger-seals in Chinese Documents, with Special Reference to Documents Secured in the Western Regions," *The Memoirs of the Research Department of Tōyō bunko*, No. 11, 1939.
- "Chūgoku hōshi ni okeru shufu no chii to kagi—Kahoku nōson no hōkanshū wo mo fukumete" (The Position of the Housewife in the Peasant's Family and the Problem of Key—with Some Considerations of Customary Legal Practices in Rural North China), *Kokka gakkai zasshi*, Vol. 61, Nos. 4 and 5, Oct. and Nov., 1947.
- "Chūgoku no shin-koninhō ni tsuite" (On the New Chinese Marriage Law), *Hōritsu jihō*, Vol. 23, No. 1, Jan., 1951.
- "Chūgoku no shin-rikonhō" (The New Chinese Law of Divorce), *Hikaku-hō kenkyū*, No. 2, May, 1951.
- "Shin-Chūgoku no keijihō no tokushoku" (The Special Features of the New Chinese

* Dr. Niida's articles amounted to as many as 200, of which many are included in the four volumes of *Chūgoku hōseishi kenkyū* listed above. Accordingly, we have listed above two or three of the more important of his early articles together with those connected with the North China rural survey, and have added some examples of articles on the new Chinese marriage law, etc., not included in that work. A complete list of Dr. Niida's articles is given at the end of the first volume of the Festschrift entitled *Tōyō no hō to shakai* (The Law and Society of the Orient). We may add that of the lecture delivered at the School of Oriental and African Studies, University of London, and other papers left by Dr. Niida are shortly to be published by the Iwanami-shoten under the title of *Chūgoku no hō to shakai to rekishi* (Chinese Law in Relation to Chinese Society and History).

- Criminal Law), *Ajia mondai*, Vol. 3, No. 2, Aug., 1955.
- “Chūgoku minshushugi kakumei to kazoku” (The Chinese People’s Democratic Revolution and the Family), *Kazoku mondai to kazokuhō shirizu* (A Series of Family Problems and Family Law), Vol. I, Feb., 1957.
- “Chūka-jimmin-kyōwakoku koninhō” (The Marriage Law of the People’s Republic of China), in Kōjirō Miyazaki ed., *Shin-hikaku-koninhō—I: Tōyō* (A Comparison of Laws Relating to Marriage and Divorce—I: Orient), Tokyo, Keisō-shobō, 1960.
- “Chūgoku no atarashii hō to dōtoku” (The New Law of China Considered in Relation to Morality), in the *Chūgoku no hō to shakai* (Chinese Law and Society), compiled by the International Association of Jurists, July, 1960.
- “Land Reform and the New Marriage Law in China,” *The Developing Economies*, Vol. 2, No. 1, 1964.