This topic might come as a surprise to the Western, particularly the American reader, who may have believed that the term "judicial review" specifically means judicial interpretation by the U.S. Supreme Court. It is virtually never used in reference to the legal system of the People’s Republic of China. In this paper I shall try, using the comparative approach, to convince the reader that "judicial review" does exist in China.

1. Judicial Review by the U.S. Supreme Court

It is agreed that judicial review in the United States did exist before the landmark case of Marbury v. Madison, but U.S. legal scholars tend to take this case as the first to explore clearly the following important principles of judicial review: 1) it is emphatically the province and duty of the judicial branch to say what the law is; 2) if a law conflicts with the Constitution, the court must apply the Constitution rather than the law; and 3) the Supreme Court has the final word in interpreting the U.S. Constitution. Some legal scholars challenge the constitutional basis for judicial review; however, for purposes of this paper, it is less important to determine whether judicial review was correctly found in the Constitution, or where it was found, than to determine how it currently functions.

Although additional points regarding the functions of judicial review could be made, there is no doubt that the three functions I shall enumerate in the following analysis can be taken as obvious and fundamental. The functions of judicial review are:

* The author would like to thank Professor Akhil Amar, Yale Law School, David Jones, Editor-in-Chief of the Yale Journal of International Law, and Cheri Ho, for their comments and suggestions.

2. Ibid., 7, 25-33.
a) A device to protect the principle of checks and balances. Judicial review is viewed as an instrument for keeping Congress and the President within constitutional bounds. In the Congressional sphere, the Supreme Court has reviewed many cases regarding the powers of Congress to regulate commerce as well as to tax and to spend. For example, in *Hammer v. Dagenhart*, 247 U.S. 251 (1918), the Supreme Court invalidated the federal Child Labor Act of 1916 on the ground that Congress exceeded its commerce powers. As for the President, the best-known case in which the Court had checked his authority, is *Youngstown Sheet and Tube Company v. Sawyer*, 343 U.S. 579 (1952), in which the Court held that an order, issued to the Army by President Truman, to seize and operate the nation’s steel mills, could not stand because “the Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times”. It is necessary to point out that not all the reviews of cases concerning the powers of Congress and of the President are representative of the people’s will, nor can the grounds to explain their judgments be explicitly found in the U.S. Constitution. Most importantly, however, judicial review has been used as an efficient weapon to develop and perfect the principle of checks and balances which the Founding Fathers established in the U.S. Constitution;

b) As the final word in interpreting the U.S. Constitution. Some people argue that Congress and the President can also interpret the Constitution, based upon their own understanding of it, to find grounds for the lawmaking process. To some degree, I agree with this point. However, I want to focus on lawsuits in which the U.S. Constitution is involved, and judicial review by the nine Justices of the Supreme Court is the last word in interpreting the Constitution.

Because of the brevity and flexibility of the U.S. Constitution, misunderstandings and multiple interpretations of the Constitution among judges of lower courts are inevitable. Judicial review is a method of resolving such misinterpretations, although there have been many academic disputes, as well as judicial dissents among the nine Justices, about the decisions of the Supreme Court. One thing is very clear: the U.S. needs the most authoritative judicial body – its Supreme Court – to interpret the Constitution because of the Constitution itself and the special principle of federalism;

c) As a method to adapt the U.S. Constitution to changing circumstances. Judicial review has played a much more important role than the constitu-