The Summary of “Fundamental Human Right in Japan”

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It is important to comprehend fundamental human rights embodying the constitutional democracy in the twenties century political systems. The military occupation originated from the principle of fundamental human rights was tempered because of the democratization in 1945. Going back to before then, there is no principle of democratic constitutionalism, and the restriction of human rights exists with the strain between people getting the benefits from human rights and this limitation. The new creation of democratic constitution in 1945 plays a new part of the individual as the stock of fundamental human rights. On the other hand, the “public welfare” doctrine presents in the constitution from Article 12 the phrase “constant endeavor”. It is implicit because of the natural limitation drafted by Americans, and contains the problems that are the weak emphasis on individuality and Japanese individual which exists in the society and is not isolated. Nevertheless, this public welfare doctrine is in danger of the situation like a within-the-limits-of-law general by the restriction of rights or liberties. According to the study of Lawrence W. Beer, the temporary strains are better than the general limitation because it is further from the systematic oppression of freedom such as the case of the Meiji Constitution. The Japanese Supreme Judicial Court has been making use of the public welfare doctrine with the balance between the benefit of individual right, the well-being and the society.