

بسم الله الرحمن الرحيم



HOSSAM MAGHRABY



شبكة المعلومات الجامعية التوثيق الالكتروني والميكرو فيلم



HOSSAM MAGHRABY

جامعة عين شمس

التوثيق الإلكتروني والميكروفيلم

قسم

نقسم بالله العظيم أن المادة التي تم توثيقها وتسجيلها
على هذه الأقراص المدمجة قد أعدت دون أية تغيرات



يجب أن

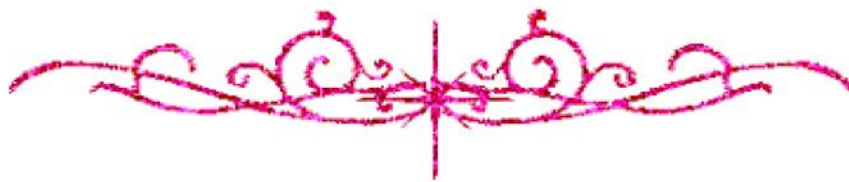
تحفظ هذه الأقراص المدمجة بعيدا عن الغبار



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بعض الوثائق الأصلية تالفة



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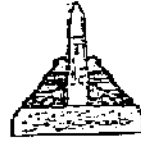


بالرسالة صفحات

لم ترد بالأصل



HOSSAM MAGHRABY



كلية الحقوق

حق الحل في النظام النيابي البرلماني

(دراسة مقارنة)

رسالة للحصول على درجة الدكتوراه في الحقوق

مقدمة من

خالد عباس مسلم

لجنة المناقشة والحكم على الرسالة

الأستاذ الدكتور / مصطفى محمود عفيفي

أستاذ القانون العام

وعميد كلية الحقوق - جامعة طنطا

رئيساً

الأستاذ الدكتور / رمضان محمد بطيخ

أستاذ ورئيس قسم القانون العام

بكلية الحقوق - جامعة عين شمس

عضواً

الأستاذ الدكتور / محمود أبو السعود إبراهيم حبيب

أستاذ القانون العام المساعد

بكلية الحقوق - جامعة عين شمس

مشرقا وعضواً

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بسم الله الرحمن الرحيم

﴿ شهد الله أنه لا آله إلا هو والملائكة

وأولوا العلم قائما بالقسط

﴿ لا إله إلا هو العزيز الحكيم

صدق الله العظيم

(ال عمران - ١٨)

[illegible]

the 1990s, the number of people in the United States who are 65 years of age or older is projected to increase from 20 million to 30 million, and the number of people 75 years of age or older is projected to increase from 10 million to 15 million (U.S. Census Bureau, 1996). The number of people 85 years of age or older is projected to increase from 2 million to 4 million (U.S. Census Bureau, 1996). The number of people 90 years of age or older is projected to increase from 500,000 to 1 million (U.S. Census Bureau, 1996). The number of people 95 years of age or older is projected to increase from 100,000 to 200,000 (U.S. Census Bureau, 1996). The number of people 100 years of age or older is projected to increase from 10,000 to 20,000 (U.S. Census Bureau, 1996).

the 1990s, the number of people in the United States who are 65 years of age or older has increased by 50 percent, and the number of people 75 years of age or older has increased by 100 percent. The number of people 85 years of age or older has increased by 200 percent. The number of people 95 years of age or older has increased by 400 percent. The number of people 100 years of age or older has increased by 1,000 percent. The number of people 105 years of age or older has increased by 2,000 percent. The number of people 110 years of age or older has increased by 4,000 percent. The number of people 115 years of age or older has increased by 8,000 percent. The number of people 120 years of age or older has increased by 16,000 percent. The number of people 125 years of age or older has increased by 32,000 percent. The number of people 130 years of age or older has increased by 64,000 percent. The number of people 135 years of age or older has increased by 128,000 percent. The number of people 140 years of age or older has increased by 256,000 percent. The number of people 145 years of age or older has increased by 512,000 percent. The number of people 150 years of age or older has increased by 1,024,000 percent. The number of people 155 years of age or older has increased by 2,048,000 percent. The number of people 160 years of age or older has increased by 4,096,000 percent. The number of people 165 years of age or older has increased by 8,192,000 percent. The number of people 170 years of age or older has increased by 16,384,000 percent. The number of people 175 years of age or older has increased by 32,768,000 percent. The number of people 180 years of age or older has increased by 65,536,000 percent. The number of people 185 years of age or older has increased by 131,072,000 percent. The number of people 190 years of age or older has increased by 262,144,000 percent. The number of people 195 years of age or older has increased by 524,288,000 percent. The number of people 200 years of age or older has increased by 1,048,576,000 percent. The number of people 205 years of age or older has increased by 2,097,152,000 percent. The number of people 210 years of age or older has increased by 4,194,304,000 percent. The number of people 215 years of age or older has increased by 8,388,608,000 percent. The number of people 220 years of age or older has increased by 16,777,216,000 percent. The number of people 225 years of age or older has increased by 33,554,432,000 percent. The number of people 230 years of age or older has increased by 67,108,864,000 percent. The number of people 235 years of age or older has increased by 134,217,728,000 percent. The number of people 240 years of age or older has increased by 268,435,456,000 percent. The number of people 245 years of age or older has increased by 536,870,912,000 percent. The number of people 250 years of age or older has increased by 1,073,741,824,000 percent. The number of people 255 years of age or older has increased by 2,147,483,648,000 percent. The number of people 260 years of age or older has increased by 4,294,967,296,000 percent. The number of people 265 years of age or older has increased by 8,589,934,592,000 percent. The number of people 270 years of age or older has increased by 17,179,869,184,000 percent. The number of people 275 years of age or older has increased by 34,359,738,368,000 percent. The number of people 280 years of age or older has increased by 68,719,476,736,000 percent. The number of people 285 years of age or older has increased by 137,438,953,472,000 percent. The number of people 290 years of age or older has increased by 274,877,906,944,000 percent. The number of people 295 years of age or older has increased by 549,755,813,888,000 percent. The number of people 300 years of age or older has increased by 1,099,511,627,776,000 percent. The number of people 305 years of age or older has increased by 2,199,023,255,552,000 percent. The number of people 310 years of age or older has increased by 4,398,046,511,104,000 percent. The number of people 315 years of age or older has increased by 8,796,093,022,208,000 percent. The number of people 320 years of age or older has increased by 17,592,186,044,416,000 percent. The number of people 325 years of age or older has increased by 35,184,372,088,832,000 percent. The number of people 330 years of age or older has increased by 70,368,744,177,664,000 percent. The number of people 335 years of age or older has increased by 140,737,488,355,328,000 percent. The number of people 340 years of age or older has increased by 281,474,976,710,656,000 percent. The number of people 345 years of age or older has increased by 562,949,953,421,312,000 percent. The number of people 350 years of age or older has increased by 1,125,899,906,842,624,000 percent. The number of people 355 years of age or older has increased by 2,251,799,813,685,248,000 percent. The number of people 360 years of age or older has increased by 4,503,599,627,370,496,000 percent. The number of people 365 years of age or older has increased by 9,007,199,254,740,992,000 percent. The number of people 370 years of age or older has increased by 18,014,398,509,481,984,000 percent. The number of people 375 years of age or older has increased by 36,028,797,018,963,968,000 percent. The number of people 380 years of age or older has increased by 72,057,594,037,927,936,000 percent. The number of people 385 years of age or older has increased by 144,115,188,075,855,872,000 percent. The number of people 390 years of age or older has increased by 288,230,376,151,711,744,000 percent. The number of people 395 years of age or older has increased by 576,460,752,303,423,488,000 percent. The number of people 400 years of age or older has increased by 1,152,921,504,606,846,976,000 percent. The number of people 405 years of age or older has increased by 2,305,843,009,213,693,952,000 percent. The number of people 410 years of age or older has increased by 4,611,686,018,427,387,904,000 percent. The number of people 415 years of age or older has increased by 9,223,372,036,854,775,808,000 percent. The number of people 420 years of age or older has increased by 18,446,744,073,709,551,616,000 percent. The number of people 425 years of age or older has increased by 36,893,488,147,419,103,232,000 percent. The number of people 430 years of age or older has increased by 73,786,976,294,838,206,464,000 percent. The number of people 435 years of age or older has increased by 147,573,952,589,676,412,928,000 percent. The number of people 440 years of age or older has increased by 295,147,905,179,352,825,856,000 percent. The number of people 445 years of age or older has increased by 590,295,810,358,705,651,712,000 percent. The number of people 450 years of age or older has increased by 1,180,591,620,717,411,303,424,000 percent. The number of people 455 years of age or older has increased by 2,361,183,241,434,822,606,848,000 percent. The number of people 460 years of age or older has increased by 4,722,366,482,869,645,213,696,000 percent. The number of people 465 years of age or older has increased by 9,444,732,965,739,290,427,392,000 percent. The number of people 470 years of age or older has increased by 18,889,465,931,478,580,854,784,000 percent. The number of people 475 years of age or older has increased by 37,778,931,862,957,161,709,568,000 percent. The number of people 480 years of age or older has increased by 75,557,863,725,914,323,419,136,000 percent. The number of people 485 years of age or older has increased by 151,115,727,451,828,646,838,272,000 percent. The number of people 490 years of age or older has increased by 302,231,454,903,657,293,676,544,000 percent. The number of people 495 years of age or older has increased by 604,462,909,807,314,587,353,088,000 percent. The number of people 500 years of age or older has increased by 1,208,925,819,614,629,174,706,176,000 percent. The number of people 505 years of age or older has increased by 2,417,851,639,229,258,349,412,352,000 percent. The number of people 510 years of age or older has increased by 4,835,703,278,458,516,698,824,704,000 percent. The number of people 515 years of age or older has increased by 9,671,406,556,917,033,397,649,408,000 percent. The number of people 520 years of age or older has increased by 19,342,813,113,834,066,795,298,816,000 percent. The number of people 525 years of age or older has increased by 38,685,626,227,668,133,590,597,632,000 percent. The number of people 530 years of age or older has increased by 77,371,252,455,336,267,181,195,264,000 percent. The number of people 535 years of age or older has increased by 154,742,504,910,672,534,362,390,528,000 percent. The number of people 540 years of age or older has increased by 309,485,009,821,345,068,724,781,056,000 percent. The number of people 545 years of age or older has increased by 618,970,019,642,690,137,449,562,112,000 percent. The number of people 550 years of age or older has increased by 1,237,940,039,285,380,274,899,124,224,000 percent. The number of people 555 years of age or older has increased by 2,475,880,078,570,760,549,798,248,448,000 percent. The number of people 560 years of age or older has increased by 4,951,760,157,141,521,099,596,496,896,000 percent. The number of people 565 years of age or older has increased by 9,903,520,314,283,042,199,193,993,792,000 percent. The number of people 570 years of age or older has increased by 19,807,040,628,566,084,398,387,987,584,000 percent. The number of people 575 years of age or older has

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1. *Phragmites australis* (Cav.) Trin. ex Steud.

أهراء

الى رمز الحب والعطاء .. الى النبع الذي استلهمت منه

نبض الحياة ... الى والدي

الى من شاركتني صعب الحياة وتحملت العسر من

التضحيات الى زوجتي

الى الزهور الياض زينة الحياة الدنيا

أبنائي (عمرو - محمد)

أهري هذا البحث المتواضع

شكر و تقدير

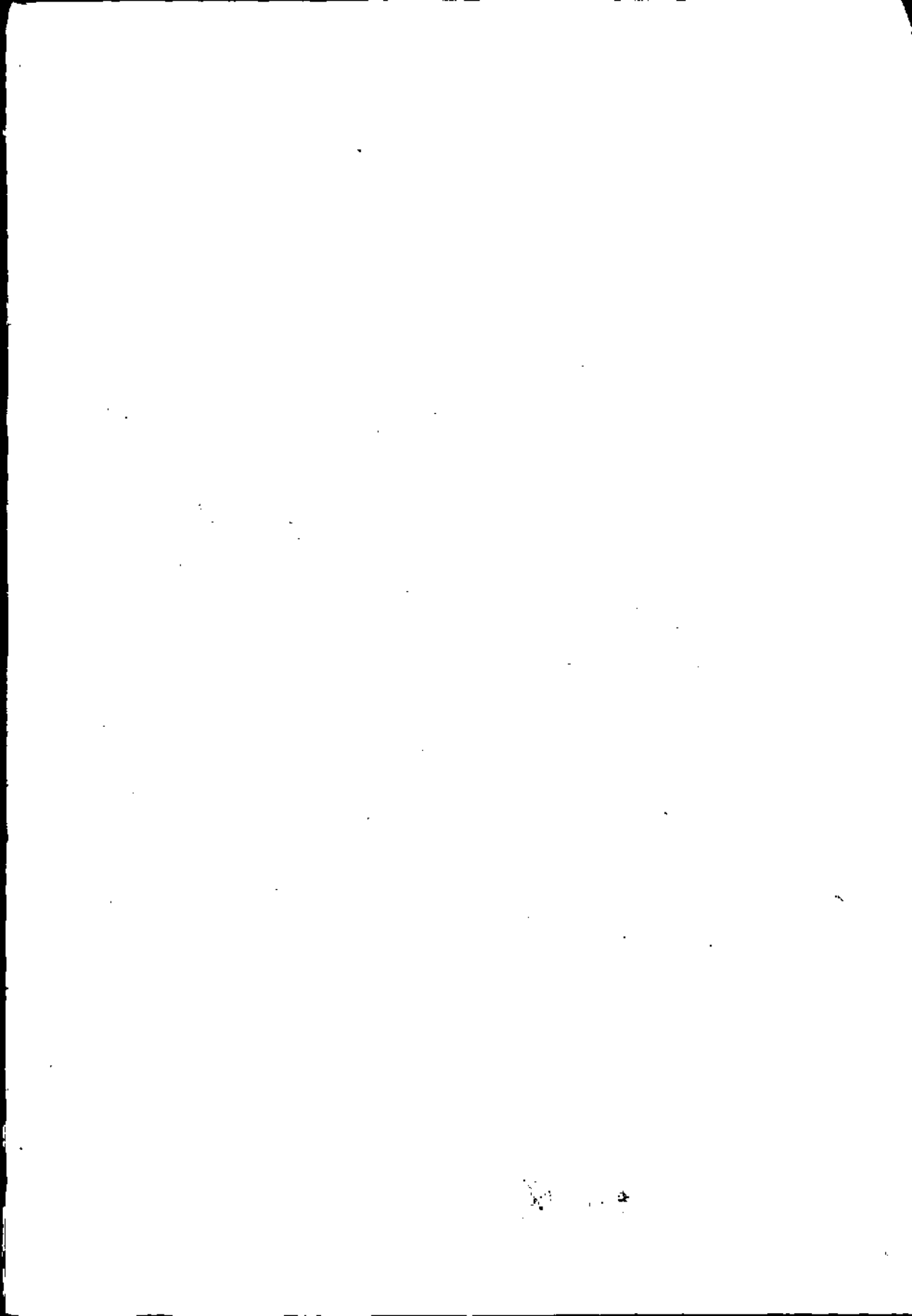
بعد الشكر لله والحمد له والثناء عليه والصلاة والسلام على أشرف المرسلين سيدنا محمد ﷺ .

أتقدم بجزيل الشكر والثناء إلى من أفادنى بعلمه واحسن توجيهى إلى أستاذى الفاضل الأستاذ الدكتور/ محمود أبو السعود حبيب - على تفضله بالاشراف على هذا البحث وعلى ما بذله معى من جهداً كبير كان له بالغ الأثر فى انجاز هذا البحث فله من الله الثواب والأجر ومنى عميق الشكر والتقدير.

كما أتوجه بخالص الشكر إلى الأستاذ الدكتور/ مصطفى محمود عفيفى - أستاذ القانون العام وعميد كلية الحقوق جامعة طنطا على تفضله بقبول المشاركة فى مناقشة هذا البحث رغم اعبائه الكثيرة فجزاه الله عنى خير الجزاء وله منى خالص الشكر وعميق التقدير.

كما أتوجه بجزيل الشكر أيضاً للأستاذ الدكتور/ رمضان محمد بطيخ - أستاذ ورئيس قسم القانون العام بكلية الحقوق جامعة عين شمس على تفضله بقبول مشاركته فى مناقشة هذا البحث على الرغم من كثرة اعبائه فجزاه الله عنى خير الجزاء وله منى عميق الشكر والتقدير.

كما أتوجه بالشكر لكل من علمنى منذ الصغر وكل من شارك فى هذا البحث بالعلومة والنصح والمشورة والدعم وأخص بالشكر اسرتى التى تحملت الكثير فى سبيل انجاز هذا البحث فله من الله خير الجزاء.



مقدمة

١- موضوع البحث

تعتبر الرقابة المتبادلة بين السلطة التشريعية والسلطة التنفيذية من اهم الموضوعات التى شغلت الفقه الدستورى ، واذا كانت وسائل الرقابة بين السلطين متعدد ، فان اخطر هذه الوسائل على الاطلاق هى وسيلة حل البرلمان .

ويعنى هذا الحق ان الحكومة يكون بمكنتها انتهاء مدة المجلس التشريعى قبل المدة المحددة له ، والتى تنص عليها الدساتير ، والدعوة الى تشكيل مجلس نيابى جديد ويرتب حل البرلمان اثارا خطيرة تتعلق بوضع السلطات الدستورية فى الدولة اذ يكون للحكومة بعض الصلاحيات - فى اثناء حل البرلمان - لم تكن تتمتع بها فى وجوده الا بضوابط وقيود خاصة تزيد عما هو مقرر لهما فى فترة الحل .

٢- اهمية البحث

اذا كانت الدساتير المختلفة قد نظمت العلاقة بين السلطة التشريعية والسلطة التنفيذية فى الدولة على نحو يضمن تحقيق التوازن فى هذه العلاقة بين السلطات ويمنع من اعتداء سلطة على اخرى ، فإن الذى دعانا الى تناول هذا الموضوع هو ذلك التوازن المفقود بين مكنتات الحكومة بالمقابلة بالسلطات المخولة للبرلمان .

فعلى حين دأبت الحكومات المختلفة - فى مصر - على الاعتداء على البرلمان بصورة لم يتمكن معها اى برلمان ، باستثناء القليل منها ، من اكمال مدته النيابية فانه لم يحدث ، ولو لمرة واحدة ، ان تقررت مسئولية وزارة او حتى وزير امام البرلمان فى مصر بما يقطع بتزايد دور السلطة التنفيذية .

والملاحظ ان تلك الظاهرة لسم تقتصر على مصر وحدها ، ولكن امتدت الى الكثير من دول العالم الثالث الامر الذى يتطلب ضرورة البحث عن ضوابط لتنظيم استخدام حق الحكومة فى حل البرلمان ، خاصة وان هذا الموضوع - على عكس كافة وسائل الرقابة المتبادلة بين السلطتين التشريعية والتنفيذية - لم يحظى بالدراسة الكافية باستثناء بعض الدراسات المنفرقة .

ولعل الصعوبات العديدة التى تواجه الباحث فى دراسة واستقراء هذا الموضوع ، وهو حق الحل ، تتمثل فى ندرة المراجع التى يحتاجها الباحث اضافة الى طبيعة الدراسة والتى تتطلب البحث عن تاريخ بداية كل برلمان ونهايته وهو الامر الذى يشكل صعوبة بالغة نظرا للتضارب فى مواعيد بداية ونهاية البرلمانات بين المرجع المختلفة .

و يرجع ذلك - فى نظرنا - الى ان بعض هذه المؤلفات قد اعتمد تاريخ اصدار قرار الحل واعتبره بمثابة نهاية مدة البرلمان ، والبعض الآخر اعتمد على تاريخ نهاية دور الانعقاد الاخير للمجلس ، على ذهبت بعض المؤلفات الى التحويل على تاريخ اخر جلسة عقدها البرلمان .

وقد كان منهجنا فى هذا المضمار يعتمد على التاريخ الذى اجمعت عليه غالبية المؤلفات التى حصلنا عليها تمشيا مع اصول البحث العلمى الصحيح .

٣- خطة البحث

تقسم هذه الدراسة الى باين رئيسيين ، يسبقهما باب تمهيدى عرضنا فيه للجذور التاريخية لحق الحل وقد قسمنا هذا الباب الى فصلين بينا فى الفصل الاول نشأة النظام البرلمانى وعرضنا فيه بايجاز للتعريف بهذا النظام ، وتميزه عن غيره من الانظمة الحكومية الاخرى فى مبحث اول ثم بينا الجذور التاريخية لهذا النظام فى المبحث الثانى وعرضنا بايجاز