ment, providing that "[a]ll persons born or naturalized in the United States" are citizens.[101] Significantly, however, Congress, in which a number of Framers sat, provided in the Naturalization act of 1790 that "the children of citizens of the United States, that may be born beyond the sea, . . . shall be considered as *natural born citizens* . . . ."[102] This phrasing followed the literal terms of British statutes, beginning in 1350, under which persons born abroad, whose parents were both British subjects, would enjoy the same rights of inheritance as those born in England; beginning with laws in 1709 and 1731, these statutes expressly provided that such persons were natural-born subjects of the crown.[103] There is reason to believe, therefore, that the phrase includes persons who become citizens at birth by statute because of their status in being born abroad of American citizens.[104] Whether the Supreme Court would decide the issue should it ever arise in a "case or controversy"—as well as how it might decide it—can only be speculated about.

Clause 6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President declaring what Officer shall then

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[101] Reliance on the provision of an Amendment adopted subsequent to the constitutional provision being interpreted is not precluded by but is strongly militated against by the language in Freytag v. Commissioner, 501 U.S. 868, 886–87 (1991), in which the Court declined to be bound by the language of the 25th Amendment in determining the meaning of "Heads of Departments" in the Appointments Clause. *See also* id. at 917 (Justice Scalia concurring). If the Fourteenth Amendment is relevant and the language is exclusive, that is, if it describes the only means by which persons can become citizens, then, anyone born outside the United States would have to be considered naturalized in order to be a citizen, and a child born abroad of American parents is to be considered "naturalized" by being statutorily made a citizen at birth. Although dictum in certain cases supports this exclusive interpretation of the Fourteenth Amendment, United States v. Wong Kim Ark, 169 U.S. 649, 702–03 (1898); *cf.* Montana v. Kennedy, 366 U.S. 308, 312 (1961), the most recent case in its holding and language rejects it. Rogers v. Bellei, 401 U.S. 815 (1971).

[102] Act of March 26, 1790, 1 Stat. 103, 104 (emphasis supplied). *See* Weedin v. Chin Bow, 274 U.S. 657, 661–666 (1927); United States v. Wong Kim Ark, 169 U.S. 649, 672–675 (1898). With minor variations, this language remained law in subsequent reenactments until an 1802 Act, which omitted the italicized words for reasons not discernable. *See* Act of Feb. 10, 1855, 10 Stat. 604 (enacting same provision, for offspring of American-citizen fathers, but omitting the italicized phrase).

[103] 25 Edw. 3, Stat. 2 (1350); 7 Anne, ch. 5, § 3 (1709); 4 Geo. 2, ch. 21 (1731).

[104] *See*, *e.g.*, Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1 (1968).