That the power of Congress to punish seditious utterances in wartime is limited by the First Amendment was assumed by the Court in a series of cases,[1632] in which it nonetheless affirmed conviction for violations of the Espionage Act of 1917.[1633] The Court also upheld a state law making it an offense for persons to advocate that citizens of the state should refuse to assist in prosecuting war against enemies of the United States.[1634] Justice Holmes matter-of-factly stated the essence of the pattern that we have mentioned: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." [1635]

By far, the most dramatic restraint of personal liberty imposed during World War II was the detention and relocation of the Japanese residents of the Western states, including those who were native-born citizens of the United States. When various phases of this program were challenged, the Court held that, in order to prevent espionage and sabotage, the authorities could restrict the movement of these persons by a curfew order [1636] and even exclude them from defined areas by regulation,[1637] but that a citizen of Japanese ancestry whose loyalty was conceded could not continue to be detained in a relocation camp.[1638]

A mixed pattern emerges from an examination of the Cold War period. Legislation designed to regulate and punish the organizational activities of the Communist Party and its adherents was at first upheld,[1639] and then in a series of cases was practically viti-

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nated. *Now* that the public safety is assured, this question, as well as all others, can be discussed and decided without passion or the admixture of any element not required to form a legal judgment." 71 U.S. (4 Wall.) at 109 (emphasis by Court).

[1632] Schenck v. United States, 249 U.S. 47 (1919); Debs v. United States, 249 U.S. 211 (1919); Sugarman v. United States, 249 U.S. 182 (1919); Frohwerk v. United States, 249 U.S. 204 (1919); Abrams v. United States, 250 U.S. 616 (1919).

[1633] 40 Stat. 217 (1917), as amended by 40 Stat. 553 (1918).

[1634] Gilbert v. Minnesota, 254 U.S. 325 (1920).

[1635] Schenck v. United States, 249 U.S. 47, 52 (1919).

[1636] Hirabayashi v. United States, 320 U.S. 81 (1943).

[1637] Korematsu v. United States, 323 U.S. 214 (1944). The five-Justice majority opinion in *Korematsu* was careful to state that it was ruling on exclusion only, and not on compelled reporting to and remaining in an assembly center or relocation camp, which were the highly likely consequences of obeying the exclusion order under the regulation. 323 U.S. at 222–23.

[1638] *Ex parte* Endo, 323 U.S. 283 (1944). The *Endo* Court expressly avoided a direct constitutional ruling, holding instead that continued detention could not be supported by the statute and executive orders that underlay the detention program. 323 U.S. at 297–300.

[1639] *E.g.*, Dennis v. United States, 341 U.S. 494 (1951); Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961); American Communications Association v. Douds, 339 U.S. 382 (1950).