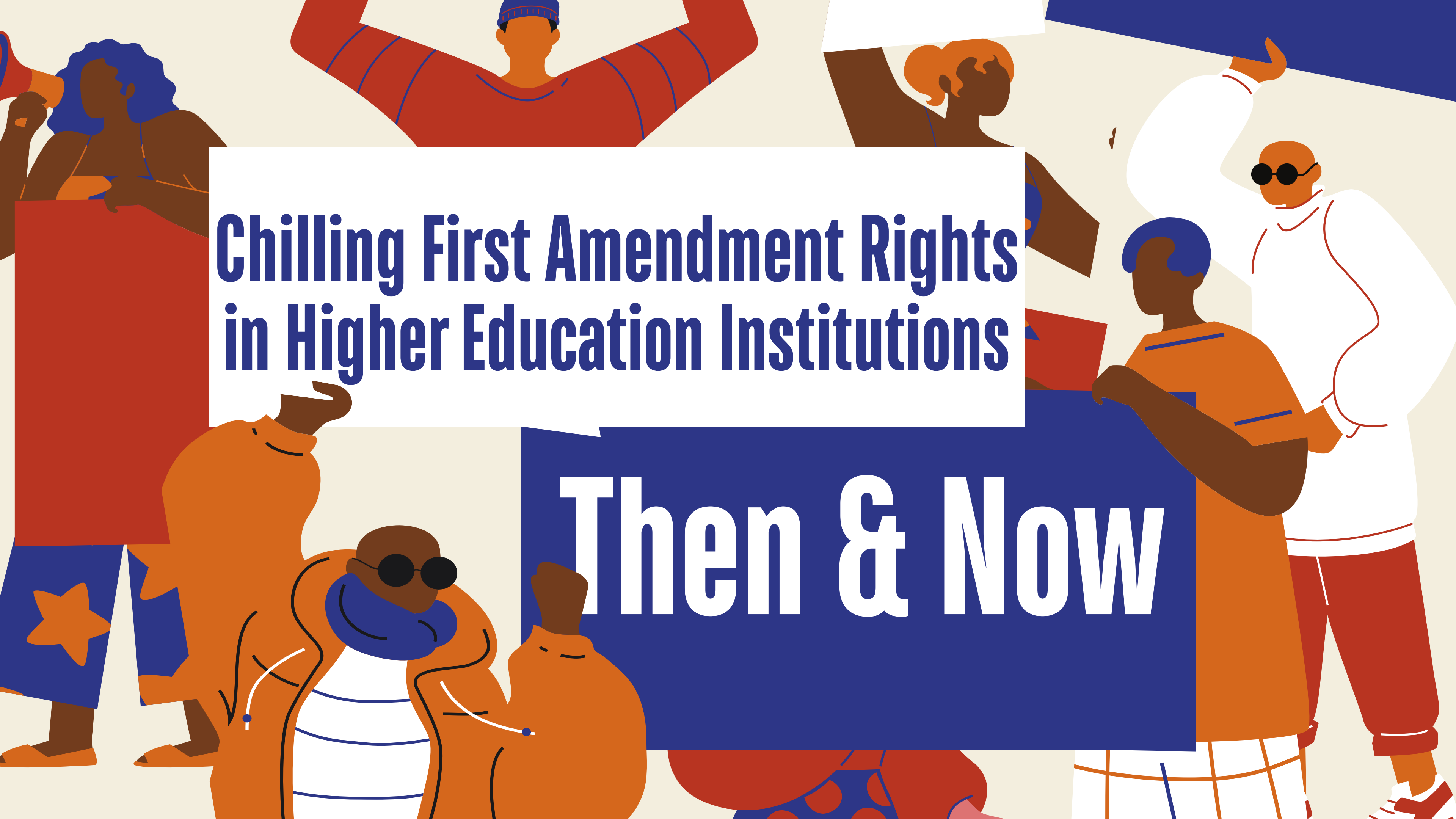




Chilling First Amendment Rights in Higher Education Institutions

Then & Now

student protests prior to 1965

in loco parentis

1920's

Protests of university administrations largely result in expulsions. Students are often not included in disciplinary hearings.

1930's

Surge in leftist groups on campuses, championing:

- better conditions for working class
- peace
- end to censoring students
- student involvement in university governance

SDS parent org born.

1940's

Student activism wanes as anti-war sentiment is worn down.

1950's

Surge of conservative student activism, championing:

- Anti-Communism
- McCarthyism
- Segregation

Leftist faculty forced out of schools.

1960's

Classical Civil Rights Movement bred largely off campus involvement with activism.

- Free Speech Movement at Berkeley, results in time/place/manner restrictions.
- Dixon v. Alabama Board of Education:
 - the beginning of the end of in loco parentis
 - Students' Rights to Due Process

1st Amendment On Campus

Colleges as Bastions of Free Speech

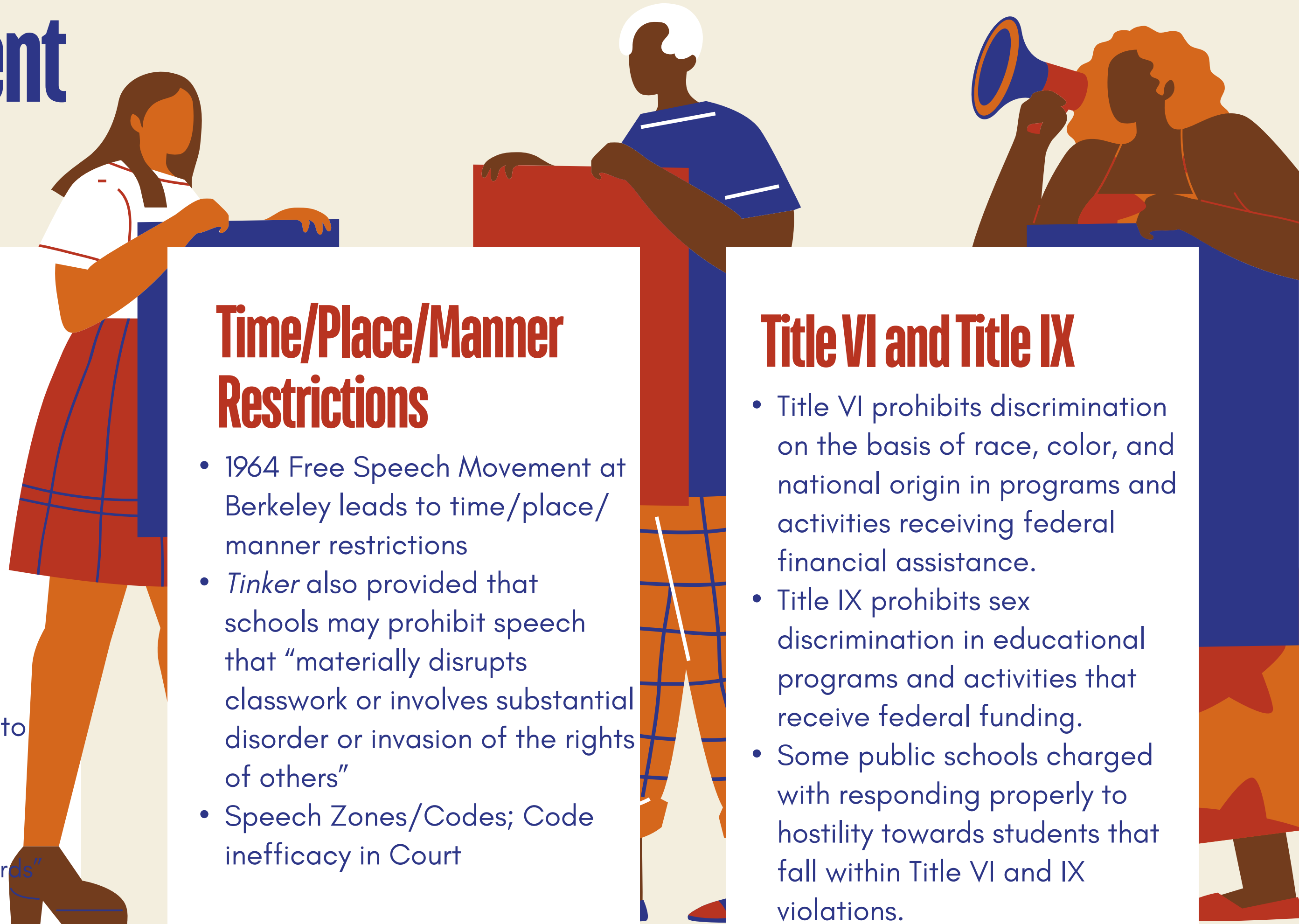
- Marketplace of Ideas, promoting inquiry, & tolerance for diverse viewpoints
- *Tinker v. Des Moines Independent Community School District (1969)*: affirmed students' rights to free speech
- Impermissible Speech:
 - imminent lawless action
 - true threats, "fighting words"
 - harassment

Time/Place/Manner Restrictions

- 1964 Free Speech Movement at Berkeley leads to time/place/manner restrictions
- *Tinker* also provided that schools may prohibit speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others"
- Speech Zones/Codes; Code inefficacy in Court

Title VI and Title IX

- Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- Title IX prohibits sex discrimination in educational programs and activities that receive federal funding.
- Some public schools charged with responding properly to hostility towards students that fall within Title VI and IX violations.



Vietnam War Student Protests



Students at University of Wisconsin-Madison in 1965

Why Protest?

Contrary to President Nixon's statements and messaging from mainstream media at the time, student anti-war protestors were not simply draft dodgers, students had several reasons to protest:

- The morality of the war itself
 - LBJ's entrance without vote
 - Nixon's Cambodia escalation
 - Violations of all points of the Just War Theory
 - Capitalistic & Imperialistic motives
- Universities' military research grants (THEMIS and IDA)
- Compulsory participation in ROTC training/On Campus ROTC generally

Tactics

- 1965 SDS March on Washington
- Teach-In's
- Strikes (+ Picket Lines)
- Occupations/Sit-In's of buildings on campus
- Traditional marches/protests/rallies

Institutional Responses

Executive Responses

- Nixon: “College bums”
- Executive Order: President’s Commission on Campus Unrest (1970)
 - Recommends: Time/Place/Manner Restrictions, condemnation of media for misrepresentations, “exchange of intelligence” between schools & law enforcement
 - Criticized and condemned, mostly by Republicans

Legislative Responses

- 32 states pass laws aimed at barring unrest
- CA makes it a misdemeanor to bar any pupil or teacher from attending class

Higher Education Responses

- Where protests occurred, discipline occurred in 75% cases
- Expansion of police forces, over 5x the officers at UCLA
- New policies on time/place/manner restrictions
- Police & National Guard called in several states; securing injunctions
- Campus officials & professors publicly disavowing & misrepresenting



Police using tear gas and night sticks on students at University of Wisconsin-Madison in 1967

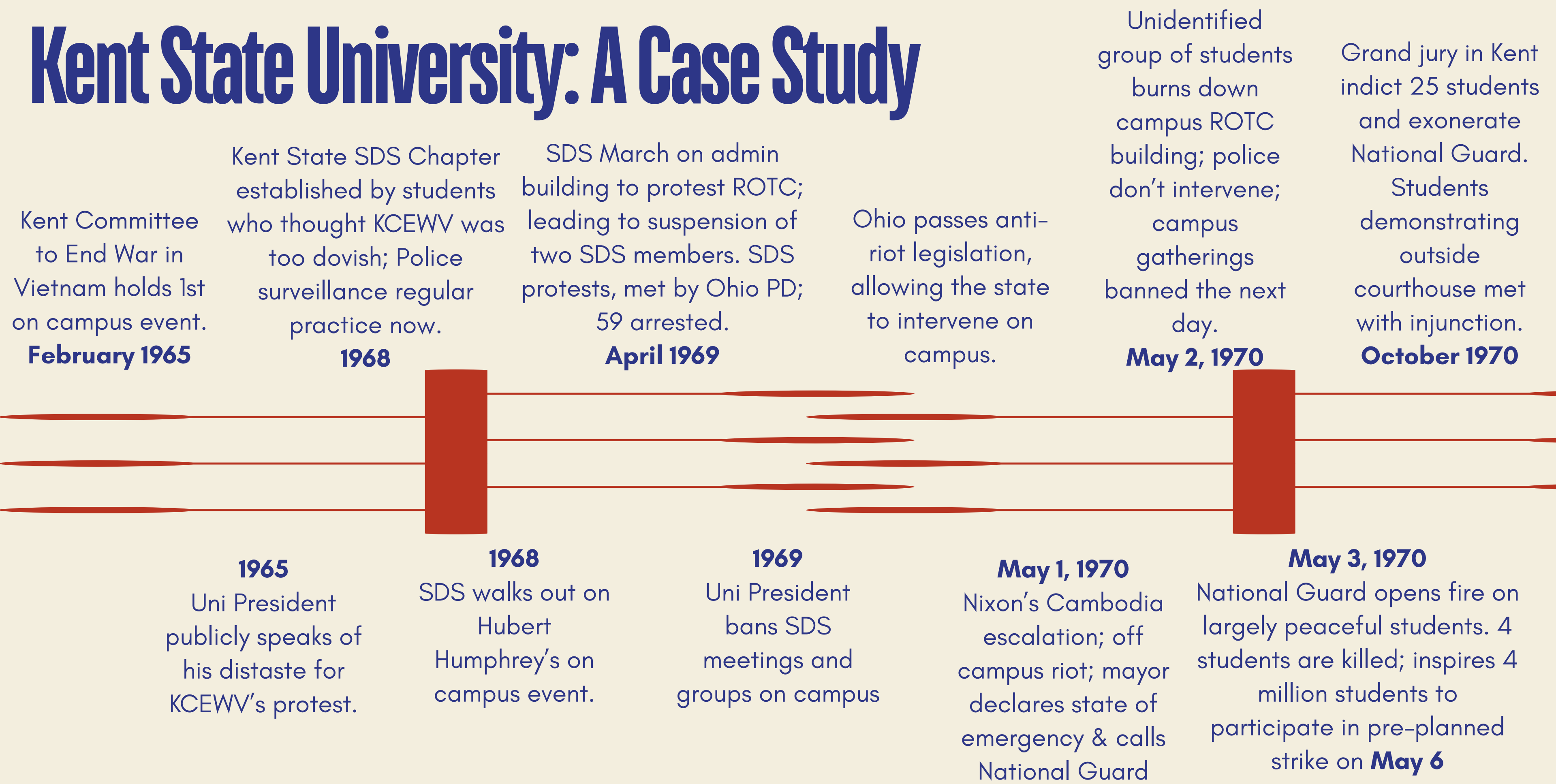


Protestors screaming above the body of a slain student at Kent State in 1970



National Guardsmen standoff with protestors at the University of New Mexico in Albuquerque

Kent State University: A Case Study



Pro-Palestine Student Protests

Students at UC Berkeley in 2024



Why Protest?

Echoes of Nixon-esque condemnations of student protests have filled mainstream media, primarily since October 2023, despite the Gaza Strip having been classified as an occupied territory since June 2007. Why are students protesting?:

- Lack of acknowledgement or condemnation of Israel's ongoing human rights violations from school officials & politicians
 - Violations of Just War Theory
 - ICJ Plausible Genocide ruling; blocking humanitarian aid to civilians
 - Capitalistic and Imperialistic motives
- Goal of divestment from Weapons & other Investments in Israel
- Faculty erroneously conflating anti-Zionism with antisemitism and putting Palestine advocates at risk

Tactics

- Encampments
- Sit-In's
- Study-In's
- Teach-In's
- Occupation of campus buildings
- Strikes
- Rallies
- Marches
- Walkouts
- Solidarity Seders and Sukkahs

Institutional Responses

Executive Responses:

- Biden administration supported more on campus surveillance
- Trump on the campaign trail promised to deport student protestors and “set that movement back 25 or 30 years”

Legislative Responses:

- Congressional Committee berated university presidents
- In June, at least 8 new federal laws proposed that would punish student protestors
- Many Governors working with schools to call in police & making anti-protest statements

Higher Education Responses:

- Admin tweaking time/place/manner restrictions right before planned encampments (Indiana University and UVA)
- Admin tweaking time/place/manner restrictions during summer (UC)
- More than 3,000 students arrested, 100's threatened with suspension/expulsion, at least 12 faculty threatened or fired



Police interference at protests in April 2024 at UT Austin



Police breach UCLA's encampment in May 2024



UT Austin: A Case Study

UT-A PSC totals: 3
suspensions and 79 unfair
disciplinary actions against
students since November 22

Three students harass a Palestine education event put on by UT-A Palestine Solidarity Committee. Call students “terrorists” and threaten that they will be “killing Arabs”. UTPD found no criminal offense.

PSC stages a walkout and sit-in on lawn. Uni President & Governor call state troopers, Austin PD, and UTPD to the scene. 57 are arrested on “criminal trespassing” charges.

October 12, 2023

April 24, 2024

Prosecutor drops charges on 24th arrestees.

April 26, 2024

Ammer Qaddumi, PSC leader, sues UT-A for unlawful retaliation, citing arrest in April.

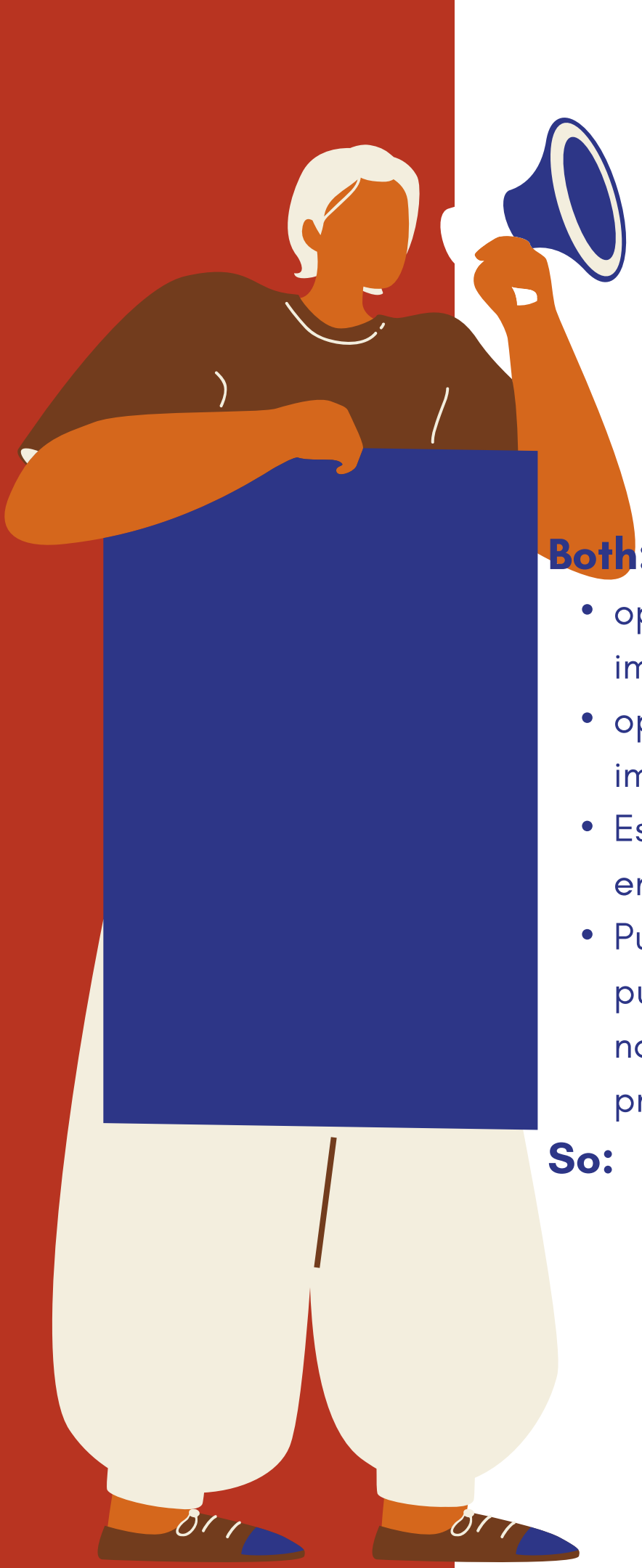
August 27, 2024

November 22, 2023
Two TA’s who sent their students mental health resources & support in wake of October incident are dismissed from their roles; UT-A doesn’t follow disciplinary protocol.

April 25, 2024
UT-A issues a interim suspension on PSC that PSC claims they’ve “failed to justify”.

April 29, 2024
PSC stages outdoor encampment protest. 90 people are arrested. Police use pepper spray and flash bangs to break up nonviolent demonstration.

October 23, 2024
Qaddumi suspended by UT-A, against recommendation of the Student Conduct Board.



What can we learn from these similarities?

Both:

- opposed capitalistic, imperialistic motives against what each group deemed immoral military campaigns
- opposed US involvement with such; further, university spending/funding implicated in both
- Escalation occurred in both case studies when spurred by extra law enforcement & university silence.
- Public support of both anti-US involvement campaigns was and is high, but public disdain for student protestors, who remain and remained largely nonviolent grew as the media spread misinformation about the motives of protestors.

So:

- University officials' and politicians' statements matter! Often they will work to chill free speech if not careful.
- If universities continue not to listen to students, results may echo Vietnam-era tragedies in Higher Education institutions
- Time/place/manner laws may not be truly content-neutral, after all.



A Potential Partial Solution: An Equity Lens

If enforcement of new and old time/place/manner restrictions is context dependent and analyzed using an equity lens, when an oppressed minority group is unable to be heard any way other than protest or political expression, the institution is ethically bound to allow for that group & supporters to protest peacefully.

silencing oppressors vs. the oppressed

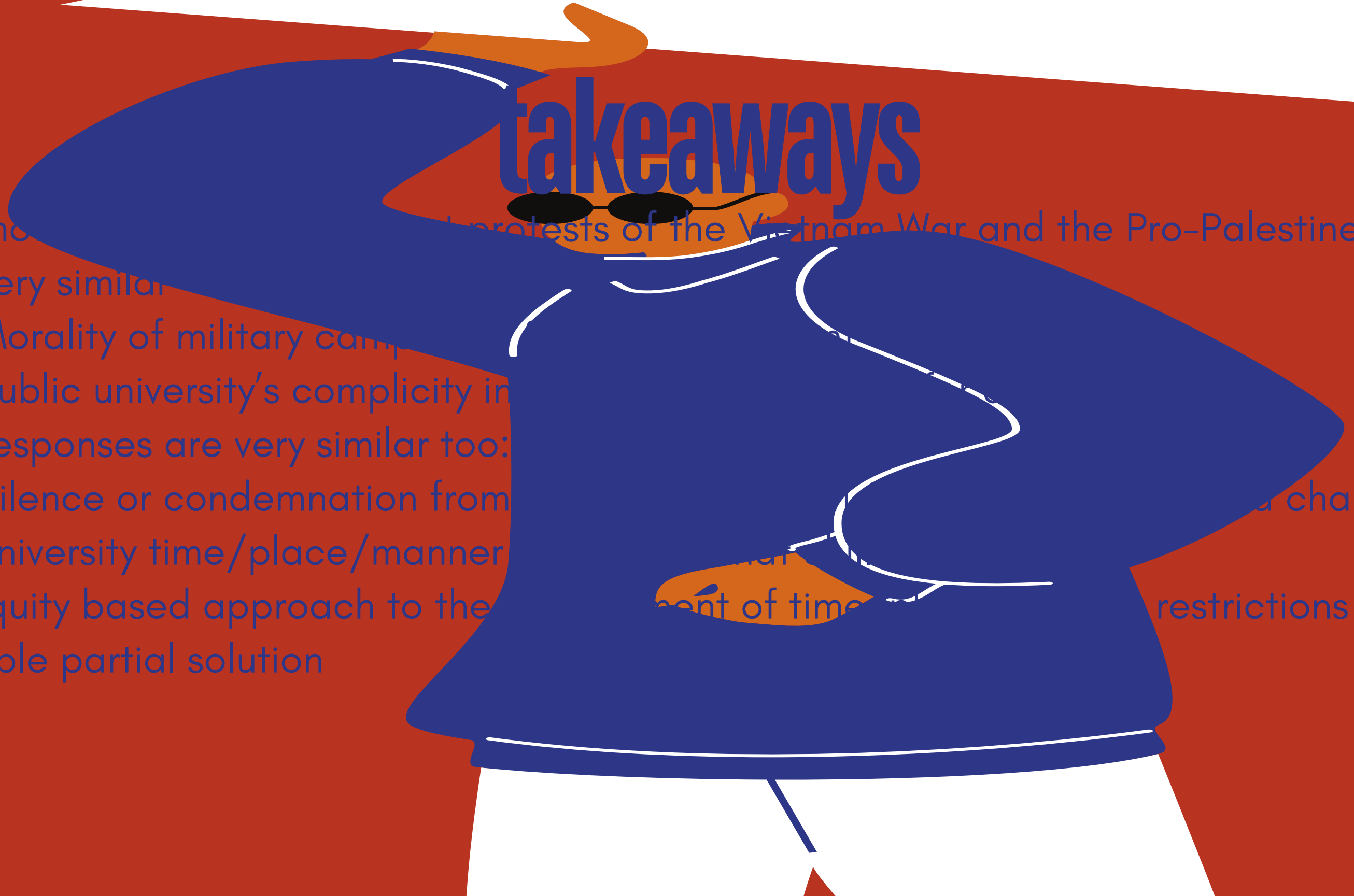
America often claims an absolutist tolerance for all speech; this is not how our system functionally operates though. Using an equity based approach to deciding when to intervene would allow universities to uplift oppressed voices and causes while still having the freedom to condemn oppressive speech.

civil disobedience

If universities were to employ an equity based test for deciding when to intervene with student speech, university disciplinary committees could be more free to protect those who disobey civilly from criminal charges and punitive measures.

accountability for public misrepresentations

From the Vietnam War protests to the Pro-Palestine protests, students' goals and attitudes have been regularly misrepresented by faculty, politicians, and mainstream media. Under this framework, those parties would have an ethical obligation to take accountability for misrepresentations.



takeaways

- The moral questions of the protests of the Vietnam War and the Pro-Palestine Movement are very similar
 - Morality of military campaign
 - Public university's complicity in war
- The responses are very similar too:
 - Silence or condemnation from university time/place/manner
 - Changes to campus culture
 - Changes to campus environment
- An equity based approach to the management of time and space restrictions poses a possible partial solution



thank

you!