

Greene on How Rights Went Wrong (in the US), Part 2

Please read Chapter 4, “Too Much Justice” from Jamal Greene’s *How Rights Went Wrong*. After reading the text, answer the questions that follow.

1. Why did Justice Powell ultimately refuse to recognize a constitutional right to education in the San Antonio schools case?
2. How did the right to education in India develop? What were some of the major steps? What ideas regarding rights were in play through this process?
3. What is “disparate impact?” How and why did it disappear from American jurisprudence?
4. Why did Justice Brennan say that the Supreme Court was afraid of “too much justice?”
5. How does Greene suggest “slippery slope” arguments help limit the scope of rights in the US context?
6. What question did the court in the South Africa case ask after determining that there was disparate impact on the basis of race? How did this question affect the substantive questions that guided the court’s ultimate decision?
7. What three questions does the “proportionality” approach to rights and judicial decision making invite us to ask? How do these questions affect judicial decision making?