Jews can find comfort in Supreme Court's quota ruling

American Jews have long been in a wrangle — among themselves and with others — about "affirmative action and quotas." The Supreme Court decisions on the subject might help clarify that wrangle, for those who get beyond the headlines.

To explain why this is a "Jewish issue" we need to go back a few years. The San Francisco Jewish community had been one of the leaders in passing the 1964 state law outlawing job discrimination. The strategy meetings had been held in the JCRC conference room, week after week, with black, religious and other leaders.

In that same year, civil rights leaders in San Francisco went to the hotels, the department stores and the automobile dealers in this city, and asked for more compliance with the new law. Management told them: "Go to the unions; they are in charge." The unions told them: "Go to management; they are in charge." Everybody told them: "Gee, the minority workers don't quite have the skills." And of course they didn't have the skills because they had never been allowed to have the jobs.

So, "affirmative action" ideas were developed here, at the same time that they were developing elsewhere. Affirmative action was designed to make sure that the new law was implemented, and meant the following: 1) Special training should be devised for those groups long denied those jobs; 2) Employers should let minority workers know, through their newspapers and other channels, that such opportunities were now open to them; 3) Some accounting should be kept of the employers' progress, in order to maintain a level of urgency.

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Jewish agencies here, and nationally, supported that affirmative action program heartily. After all, Jewish agencies had already been trying to get more Jews hired in insurance and financial institutions — and had been pushing exactly the same kind of affirmative action programs for Jews.

At some point in this frenzied period, some tried to stretch affirmative action to mean rigid quotas: specific hiring percentages set up for the different minority groups. The Jewish community opposed such quotas. Such quotas seemed to violate the principle of civil rights, and the Jews specifically had a history of suffering under them.

The landmark battle against rigid quotas in college admission, the Bakke case at the University of California, was won in the Supreme Court by one of San Francisco's pre-eminent lawyers and Jewish leaders, Reynold Colvin. Some black leaders fumed, and Jewish agencies fought among themselves.

But there was a lot of rhetorical nonsense involved. Few people really opposed affirmative action, and few people really supported rigid quotas. Too many people had an institutional reason for exaggerating the differences. However, there were some genuinely knotty problems. For example:

Suppose an employer who has persistently discriminated refuses to take any affirmative action to comply with the law. What is the remedy? According to many Jewish agencies, it is OK for the courts to order some quota approach to hiring only if it is such a radically stubborn case, only if it is for a temporary period and only if there is no injustice visited on already employed non-minority workers.

And that is roughly what the Supreme Court has been saying. In 1984 and earlier in 1986, the court ruled that employers cannot lay off non-minority workers with more seniority than minority workers. And in July 1986, the court indicated a narrow doorway through which employers could use quotas: only to remedy exceptionally stubborn discrimination, only when the impact on non-minority workers is not severe — and the word "temporary" was used.

In case you hadn't heard, life is not perfect — but in this very knotty matter, the Supreme Court seems to be taking positions with which the Jewish community can live.

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