

MEDIEVAL JUSTICE AND THE FIRST AMENDMENT

BY **DANIEL J. DEMERS**

On August 27, 1664, British naval forces entered New Amsterdam harbor, compelling the Dutch-held colony to surrender. It was immediately renamed New York. Living there was a small group of Portuguese Jews who, just ten years earlier, had sought religious refuge from the Portuguese Inquisition. The twenty-three Jews who had pursued religious tolerance and freedom would become the foundation of the Jewish community in the United States. Today, New York has the largest Jewish population outside of Israel.

But what exactly was the Portuguese Inquisition that they fled?

A recently published book in Portugal, titled *Guiomar Mendes, A Jewish Woman from Castelo de Vide Burned to Death in an Auto de Fé in 1664*, by Professor Jorge Martins, is a case study that describes the horrors of the Portuguese Inquisition.

Guiomar Mendes was born and raised Catholic in Castelo de Vide, Portugal. Her ancestors were Jews who fled the Spanish Inquisition circa 1492 by crossing into Portugal. By order of the Portuguese king, these ancestors either converted voluntarily to Catholicism or were forcibly baptized. They and their descendants were called New Christians.

Guiomar Mendes married well and eventually moved to Lisbon with her husband. After his death, she moved into her widowed uncle's home in Lisbon and managed his household. He was a wealthy merchant. When he died, she inherited his house and other assets. She was arrested



The Stretching Rack Courtesy of Inquisition Museum, Castelo de Vide, Portugal



The Strappato Courtesy of Inquisition Museum, Castelo de Vide, Portugal

there in 1662. She was 51 years old.

The ecclesiastical legal system that Guiomar Mendes faced is shocking by today's American standards of justice. Imprisoned in a "secret prison," she was not allowed to communicate with family, friends, or other prisoners. The prosecutor appointed her defense attorney, and she was never permitted to meet privately with him without a prosecutor's representative present, who made a transcript of their meetings. There were no attorney-client privileges—her defense lawyer, by law, was required to recuse himself if, during his representation, he believed she was guilty and report it in writing to the court. She was never told who her accusers were, nor was she allowed to confront them. While the court specified her alleged crimes, she was not informed of who made the accusations. Essentially, she had to guess who they were and when and where these supposed heretical acts were committed so she could defend herself. The system was designed so that the accused, in guessing her accusers, would implicate others suspected of violating the state-imposed ecclesiastical law, which banned observing or participating in the Judaic faith. If the defendant refused to confess, torture could be employed, including a stretching rack or the strappato, to extract confessions. The religious statute specified that before torturing the defendant, she should be warned, "that if she dies, breaks a limb, or loses her senses during the torture, it will be her fault because she refused to confess and voluntarily subjected herself to the torture but if she admitted her crimes, she would avoid the torture."

As it turned out, thirteen witnesses accused Guiomar Mendes of heresy, including a brother, four sisters, one brother-in-law, six nieces, and one nephew. As the process unfolded, all of them were eventually arrested and tried for secretly practicing Judaism. Guiomar Mendes was the only

one sentenced to death by fire, making her one of about 1300 Jews who faced that fate during the Portuguese Inquisition. Overall, around 40,000 Portuguese Jews were arrested and tried during the Inquisition. There was also a 'sins of the father' aspect to the conviction—any children or grandchildren of the convicted heretic were barred from employment in over 20 professional fields, including jobs such as lawyers, accountants, medical professionals, pharmacists, or any government position and/or uniformed service like police or the military.

As her trial progressed, the specific heretical acts she was accused of included observing Jewish dietary laws by refusing to eat pork, rabbit, hare, and fish with skin; secretly honoring Moses when saying the Our Father; and cleaning her house on Fridays and wearing clean clothes on Saturdays to observe the Sabbath. Traditionally, Portuguese people cleaned their houses on Saturdays and dressed nicely on Sundays to attend Mass. On other occasions, she allegedly met with fellow New Christians, performed Jewish rituals, and observed Jewish religious holidays.

Mendes argued that resentment among her siblings and relatives mainly stemmed from jealousy over her wealth. She denied ever observing any Jewish practices or celebrations. While she was permitted to select defense witnesses, the officers of the Holy Court interviewed them in her absence and without her defense attorney present. Her witnesses included two parish priests, several neighbors, and household staff, most of whom testified that she followed the Catholic faith.

In the end, the Inquisitors refused to relent and sentenced her to be burned alive. The state confiscated all her assets, and the church excommunicated her. Throughout her ordeal, she consistently denied practicing Judaism. Guiomar Mendes was only informed of her sentence two days before her execution. In a last-minute effort to avoid the death penalty, she confessed to secretly practicing Judaism while bound and standing on the pyre before it was ignited. The Inquisitors dismissed her confession, calling her a "heretic, negative, stubborn, and unrepentant." She was burned alive on August 17, 1664, along with four other New Christians.

Mindful of these European excesses toward the Jews, James Madison and Thomas Jefferson aimed to reduce those excesses in the new republic by eliminating religious intolerance when they pushed for the First Amendment. In Jefferson's words, the goal was to grant religious freedom to "the Jew, the Gentile, the Christian, the Mahometan, the Hindoo and the infidel of every denomination." It was not an easy task, as several American leaders, such as Patrick Henry and John Adams, pushed for a "religious test" that would only allow Christians to seek and hold public office.

Ultimately, freedom of religion prevailed. This right was reaffirmed by America's first president, George Washington, in 1790, who wrote to Rhode Island's Jewish congregation that the new government "gives to bigotry no sanction, to persecution no assistance."

In 2023, the Jewish community of Castelo de Vide opened the Inquisition Museum to honor their ancestors who were victims of the Inquisition. About 200 New Christians from the small town faced prosecution under the Portuguese Inquisition. Housed in a seventeenth-century building, life-like silicone figures depict Guiomar Mendes' biographical ordeal as they guide visitors through the Inquisition process, room by room. The museum acts as a visual reminder of the hardships endured by the Jewish community of the Iberian Peninsula during the 285-year Inquisition. It also starkly highlights how and why America's First Amendment, which protects freedom of religion, was established. **PI**