

מסתייה דלא מפקינן ליה מקהל - It is sufficient that we are not excluding him (me) from the community.

OVERVIEW

גמרא maintains that a חלל is כהונה פסול. The reason given by the גמרא is that the חלל says, 'at least they are not excluding me from the community'. The understanding of this explanation would seem to be as follows. If the accused knows that he is not a חלל he would surely protest, for he knows that when an investigation will follow it will absolve him of all פסלות. However a (possible) חלל when accused prefers to remain silent. His reasoning is that if I remain silent I will merely (at most) be excluded from כהונה but not from the קהל ישראל. However if I protest, it is possible they will find out that I am also פסול לקהל; not only לכהונה. The question תוספות deals with is why this complicated reasoning to be פוסל a חלל שותק. It seems obvious why he is פסול. He was accused of חללות and did not deny it. That is tantamount to an admission. There is a general rule that שתיקה כהודאה דמיא. Silence is equivalent to admission.

תוספות asks:

ואם תאמר מה צריך להאי טעמא לימא הא דשתיק משום דאודויי קא מודי - And if you will say; why is this reason necessary? The גמרא should say that a חלל שותק is פסול, because his silence indicates that he is admitting to the accuser that he is a חלל. It is seemingly unnecessary to say that a חלל שותק is פסול on account of מסתייה דלא מפקינן ליה מקהל when there is a much simpler explanation.¹

תוספות goes on to prove that the reason of שתיקה כהודאה is valid, for it has already been used:²

¹ According to the current understanding of מסתייה וכו', the חלל is showing his willingness to accept his פסלות (by his שתיקה) as long as he will retain his לקהל. There is an implied כהודאה שתיקה in this reasoning. תוספות is asking let that be the entire reason without adding the 'לא מפקינן ליה מקהל'.

² Seemingly one may argue that שתיקה is not כהודאה. Let us assume that the accused woman was becoming engaged to marry a כהן when she was accused of being a חללה and she was שותק. Why is she שותק?! If this is an admission that she is a חללה, then why did she attempt to marry a כהן initially! And even if she is unsure why is she not צווח?! The שתיקה may be because she is unconcerned about the accusation. It would therefore seem that the reason she is פסול is not on account of the שתיקה by itself, but rather because of the additional support of the מסתייה וכו'. When the woman is accused of being a חללה, and is not responding, it is not because she is unconcerned about the accusation, but on the contrary, she is concerned that if the investigation will continue (on account of her צוויחה), then she may suffer more dire consequences; she will

דהא ממזר שותק³ פסול לתנא קמא משום דשתיקה כהודאה⁴ -

For according to the ת"ק a ממזר שותק is פסול because his שתיקה is an implied הודאה -

והוא הדין דחלל שותק לרבי שמעון דפסול מהאי טעמא -

And the same ruling applies by a חלל שותק that he is פסול for the same reason; namely that שתיקה כהודאה (without the reason of מסתייה).

anticipates a difficulty and resolves it:

ואף על גב דגבי ממזר שותק לדידיה לא הוי שתיקה כהודאה -

And even though that according to רשב"א we do not apply the rule of שתיקה concerning a ממזר. In fact a ממזר שותק is כשר. This would seemingly indicate that רשב"א does not accept the logic of שתיקה כהודאה (and therefore cannot use it by a חלל שותק).

rejects this reasoning. In truth רשב"א also agrees to the logic of שתיקה כהודאה; it is just that concerning a ממזר we cannot utilize the logic of שתיקה כהודאה, and –

היינו משום דסבר דממזר קלא אית ליה -

That is because רשב"א maintains that a ממזר is publicized; it is well known who is a ממזר. Therefore this accused ממזר sees no need to respond; since it is not known that he is a ממזר, this in itself proves that he is not a ממזר. However by a חלל (who is not publicized), where this argument is not applicable, רשב"א will follow the logic of שתיקה כהודאה. The question remains why say that a חלל ושותק is פסול because of מסתייה וכו', when it is simpler to say that he is פסול because שתיקה כהודאה.

answers:

ויש לומר דהכי פירושא סבר מסתייה דלא מפקינן ליה מקהל (כהונה) -

And one can say; that this is the interpretation of the phrase 'he presumes it is sufficient that we will not exclude him from the community (of כהונה)' –

פירוש אפילו מקהל כהונה אף על פי שזה מחרפו וקורו חלל -

The interpretation of the word 'קהל' is that they will not exclude him even from the community of כהנים; he will be accepted לכהונה. And even though that this accuser is shaming him and calling him a חלל, he is not perturbed for –

become פסול לקהל. This concern tells us that she is unsure of her כשרות status. It is only the addition of מסתייה that allows her שתיקה to be considered as a הודאה. According to this reasoning, if there can be no worse consequences, for instance if one is accused of being a ממזר, then the שתיקה should not be פוסל. However תוספות continues that by a ממזר שתיקה is also פוסל.

³ There is no מסתייה by a ממזר, for nothing worse can happen to him, concerning יוחסין.

⁴ We derive from ממזר that שתיקה כהודאה even when there is no additional reason of מסתייה וכו'.

סבור דאין מוציאין אותו מקהל כהונה -

He presumes that they are not excluding him from קהל כהונה; people will not pay attention to his accuser, provided that he remains silent –

וסבור אם יצווח יחזרו לברר הדבר ויפסלוהו -

And he assumes that if he will protest and argue with the accuser, they will revisit and investigate the matter and will disqualify him from כהונה.

It seems however that תוספות did not answer the original question; why are we not פוסל the ממזר שותק a פוסל ת"ק as the שתקיה כהודאה on account of חלל שותק explains:

וטעם זה שייך גם בממזר שותק לתנא קמא ולא נאמר דשתיקה כהודאה -

And this reason applies also by a ממזר שותק according to the ת"ק; and that is the reason why a ממזר שותק is פסול. **And we do not assume that**

שתקיה כהודאה. שתקיה כהודאה (according to the ת"ק) maintains that in the case of ממזר ושותק (according to the רשב"א) the logic of כהודאה does not apply.⁵ We require more substantial proof to be פוסל שותק. The proof may be as follows. When a person is certain that he is a כשר, he will definitely deny any and all accusations against him; he has nothing what to fear. However a פסול ספק is hesitant to respond to accusations. He is under the impression that there is more to gain by remaining silent than by protesting. If he remains silent, the entire issue may be forgotten and he will retain the status of a complete כשר (even לכהונה). However if he protests it may turn out that the accuser was correct and he will forfeit his former rights. The reason of מסתייה (combined with his שתקיה) is what makes the שותק פסול.

תוספות concludes:

וכן פירש בקונטרס -

And רש"י, also explains it in this manner.⁶

SUMMARY

A ממזר שותק (according to the ת"ק) and a חלל שותק (according to the רשב"א) are פסול on account of מסתייה וכו'.⁷ They assume that if they remain silent they will retain their original כשרות ([even] to כהונה).

THINKING IT OVER

⁵ A person is not required to answer charges brought against him based on hearsay and rumor. See 'Thinking it over' # 2.

⁶ (רש"י ד"ה אי) קהל כהונה refers to לא מפקי ליה מקהל the interpretation that תוספות may be referring only to the (רש"י ת"ק) ממזר ושותק of a פסול (ת"ק), for רש"י (see (רש"י ד"ה ת"ק) states that he is פסול on account of הודאה.

⁷ See 'Thinking it over' # 3.

1. Is there any difference if the פסול is on account of שהתיקה כהודאה, or on account of מסתייה (in the manner תוספות interprets תוספות)?!
2. Why indeed do we not say here⁸ שהתיקה כהודאה⁹
3. According to תוספות that שהתיקה by a ממזר (according to the רבנן) and שהתיקה by a חלל (according to the רשב"א) are פסול (not because of שהודאה), but rather because of לא מסתייה וכו';¹⁰ why therefore is the reason of לא מסתייה brought only by a שתוק חלל (according to רשב"א) and not by a שתוק ממזר (according to the ת"ק)?!¹¹

⁸ See footnote # 5.

⁹ See אבני מילואים סי' ב ס"ק ב.

¹⁰ See footnote # 7.

¹¹ See מהרש"א ומהרש"ל.