

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

OVERVIEW

maintains that a חלל שותק is חלל לכהונה. 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 לקהל; not only לכהונה. The question תוספות deals with is why this complicated reasoning to be חלל לכהונה פוסל. It seems obvious why he is חלל. 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.

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 חלל, 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 חלל on account of מסתייה דלא. It is seemingly unnecessary to say that a חלל שותק is חלל when there is a much simpler explanation.¹

goes on to prove that the reason of כהודאה שתיקה 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 צווה?! The שתיקה may be because she is unconcerned about the accusation. It would therefore seem that the reason she is חלל 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 become 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.

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 -

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

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 –

סבור דאין מוציאים 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 יצווה יחזרו לברר הדבר ויפסלוהו -

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'.

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 חלל the פוסל did not answer the original question; why are we not חלל on account of שתוקא כהודאה as the ת"ק explains: ממזר שותק a פוסל is ת"ק as the שתוקא כהודאה on account of שותק

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 שתוקא כהודאה.**

maintains that in the case of ממזר ושותק (according to the ת"ק) and חלל ושותק (according to רשב"א) the logic of שתוקא כהודאה does not apply.⁵ We require more substantial proof to be פסול a 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 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 שתוקא) is what makes the פסול שותק.

concludes: תוספות

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 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

1. Is there any difference if the פסול is on account of שתוקא כהודאה, or on account of מסתייה (in the manner תוספות interprets מסתייה)?!

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 (see קהל כהונה) refers to לא מפקי ליה מקהל that the interpretation that תוספות may be referring only to the שתוקא כהודאה (according to the ת"ק), for רש"י (see ת"ק) states that he is פסול on account of הודאה.

⁷ See 'Thinking it over' # 3.

2. Why indeed do we not say here⁸ שתיקה כהודאה⁹?

3. According to תוספות that שתיקה by a ממזר (according to the רבנן) and שתיקה by a חלל (according to the רשב"א) are פסול (not because of כהודאה), 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.