

Zera Shimshon

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Chapter XLVIII: Shoftim (Deut. 16:18–21:9)

Essay 2. Kings of the house of David should judge the people

מְדַרְשׁ רַבָּה "פִּי־תְבוּא אֶל־הָאָרֶץ", הִלְכָה מֶלֶךְ מִיִּשְׂרָאֵל שֶׁהִיָּה לוֹ עֶסֶק מֵהוּ שֶׁיִּהְיֶה מוֹתֵר לוֹ לְדוֹן בְּפָנָי בֵּית דִּין, כִּד שְׁנֵי חֻקִּים, מֶלֶךְ לֹא דֵן וְלֹא דִנִּין אוֹתוֹ, לֹא מַעִיד וְלֹא מְעִידִין אוֹתוֹ. לִימְדוּנוּ רַבּוֹתֵינוּ לָמָּה אֵין דִּנִּין אוֹתוֹ, אָמַר ר' יִרְמְיָהוּ שְׁפָתוֹב בְּדוֹד הַמֶּלֶךְ ע"ה "מִלְפָּנָיִךְ מִשְׁפָּטֵי יִצְאָ", הִגִּי אֵין בְּרִיָּה דֵן אֶת הַמֶּלֶךְ אֶלָּא הַקַּב"ה עכ"ל.

There is a **Midrash Rabbah** discussing the verses allowing Jews to have a king:

“When you come into the Land.”¹ [A point of] halacha: A king of Israel who had a legal issue, what is the ruling? Is it permitted for him to go for a trial before the court? This is what the Sages taught: A king cannot act as judge and others cannot judge him; he cannot testify and others cannot testify concerning him. Our Rabbis taught us: Why is it that others may not judge him? Rabbi Yirmiya said: As it is written regarding King David: “Let my judgment emerge from before You.”² That is, no person may judge the king except for the Holy One, Blessed be He.

- Deut. Rabbah 5:8

וְהוּא תִימָא שְׁאָמַר לָמָּה אֵין דִּנִּין אוֹתוֹ מִפְּנֵי שְׁפָתוֹב בְּדוֹד הַמֶּלֶךְ ע"ה "מִלְפָּנָיִךְ מִשְׁפָּטֵי יִצְאָ", וְהָא מֶלֶךְ לֹא דֵן וְלֹא דִנִּין אוֹתוֹ הִיָּתֵה מִשְׁפָּט דְרַבָּנָן בִּימֵי גִנְאֵי, וְעוֹד דְתַסְקֵנָהּ זֹו לֹא הִיָּתֵה אֶלָּא לְמַלְכֵי יִשְׂרָאֵל, אֲבָל לְמַלְכֵי בֵּית דִּין כְּתִיב בְּהוּ בֵּית דִּין . . . דִּינֵנו" וְכוּ', וּמִשְׁפָּט הַמֶּלֶךְ נִרְאָה שְׁאֵין דִּנִּין אֶת הַמֶּלֶךְ כִּלְלֵי אֶפְיֵלוֹ מַלְכֵי בֵּית דִּין, דְּפָתַח מֶלֶךְ יִשְׂרָאֵל שֶׁהִיָּה לוֹ עֶסֶק וְסִיִּים בְּדוֹד, וְאִם אֵין דִּנִּין אוֹתוֹ אֵינֵנו יְכוֹל לְדוֹן, ד"התקוֹנֵשׁוּ וְקוֹשֵׁי" כְּתִיב כְּדָא מְרִינֵן בְּגִמְרָא פְּרָק ב' דְּסִנְהֶדְרִין.

It is peculiar that he said: “Why is it that others may not judge him? Because it is written regarding King David, may he rest in peace, ‘Let my judgment emerge from before You.’ ”

But behold, “A king does not judge, and they do not judge him” was a rabbinic decree from the days of King Yannai. Sanhedrin 19a explains that Yannai was summoned to court on a matter. When told to stand before the judges, he said that he would only do so if the judges commanded it. Out of fear that he would harm them, they were hesitant to do so, and G-d struck them dead because they allowed their fear of Yannai to interfere with their responsibility to pursue

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¹ Deut. 17:14.

² Ps. 17:2.

justice. Following this tragedy, the Sages established the decree that a king couldn't judge or be judged.

Yannai came much later than David, so it seems odd to cite Scripture regarding King David as the alleged source. **Furthermore, that rabbinic decree enacted in King Yannai's time, was only for the kings of Israel, but regarding the kings of the House of David it is written, "O house of David, thus saith the L-rd: Execute justice in the morning."**³ Thus, it seems that David was not only allowed to judge but was supposed to do so, in contrast to the suggestion that only G-d could judge him.

Also, from the plain meaning of the Midrash, it seems that they do not judge the king at all, even the kings of the House of David, for [the Midrash] began with "A king of Israel who had a legal issue" and concluded with David.

Also, if they do not judge him, he cannot judge, for it is written "Gather yourselves and be gathered,"⁴ from which the rabbis learn that one who is not subject to judgment may not judge others, as it says in the Gemara, chapter 2 of Sanhedrin (18a).

וַיִּשׁ לֹאמַר שֶׁהַפֶּסֶף מִשְׁנֵה (בְּפֶרֶק ג' מֵהַלְכוֹת מְלָכִים) הַקֹּשֶׁה עַל מֵה שֶׁפֶתַב הַרְמַב"ם שֶׁם דְּמַלְכֵי יִשְׂרָאֵל לֹא דָנִים, וְלֹא דְנִים אוֹתָם וְכוּ'. וְהִיא מִשְׁנֵה בְּפֶרֶק ב' דְּסִנְהֶדְרִין דְּהָא לֹא תִלְיָא מִלְתָּא בְּבֵית דָּוִד אוֹ בְּבֵית יִשְׂרָאֵל אֶלָּא בְּצַדִּיקֵי וּרְשִׁיעֵי תִלְיָא מִלְתָּא וְכוּ'. וְלָמָּה הוֹצֵרְכוּ לְגִזְזֵי הַמֶּלֶךְ לֹא דָן וְלֹא דָנִים אוֹתוֹ, הוֹאִיל שֶׁעַד אוֹתוֹ הַזְּמַן הָיוּ דָנִים וְדָנִים אוֹתָם וְעוֹד וְכוּ', וְתִירֵץ שֶׁכֵּינּוּן שֶׁמִּצִּינוּ בְּבֵית דָּוִד שֶׁהַזְּכִיר הַפְּתוּב בָּהֶם "דִּינוּ לְבַקֵּר מִשְׁפָּט", אַף עַל פִּי שֶׁאַרְעַתְּ מִקְלָה עַל יָדוֹ, לֹא הָיוּ גוֹזְרִים הַמֶּלֶךְ לֹא דָן וְלֹא דָנִים אוֹתוֹ, שֶׁלֹּא לְחַלּוֹק עַל הַפְּתוּב עַכ"ל.

It can be said that the *Kesef Mishneh* commentary to the Rambam's *Mishneh Torah* (in chapter 3 of the Laws of Kings, halacha 7), raised a difficulty with what Rambam wrote there, that the kings of Israel do not judge and are not judged, etc. But this is a Mishnah in Sanhedrin chapter 2, that the matter does not depend on the House of David or the House of Israel, but rather depends on whether they are righteous or wicked, etc. Why, then, was it necessary to decree in Yannai's time that a king does not judge and is not judged, since until that time they judged others and they were judged. Also, the courts judged Yannai, even though he was not from the House of David. The *Kesef Mishneh* concludes that the decree against judging kings was only a rabbinic decree because of their wickedness, and regarding why it wasn't extended to all kings, he answered that since we find with the House of David that Scripture mentioned regarding them, "Execute justice in the morning," even had the mishap of the judges dying come through [a King of the House of David], they would not decree that a king of the House of David does not judge and is not judged, so as not to contradict Scripture.

Thus, the *Kesef Mishneh* concludes that kings of the House of David can judge and be judged, and that the decree to the contrary only applies to Kings of Israel.

³ Jer. 21:12.

⁴ Zeph. 2:1.

ולדידן עדיין יש להקשות מפמה קראי דמוכחו שפיר שהמשפט הוא ראוי למלך, ואדרבא חייב המלך לעשות משפט, דכתיב "משפט יה למלך תן", "ישפט עניי-עם" "מלך במשפט יעמיד ארץ", "שימה-לנו מלך לישפטנו" וכו', והששה לאין של "לא-תטה משפט לא תפיר פנים" וכו' היו כתובים על פסא שלמה, כמו שאמרו רז"ל. ואף שלמה לא שאל החכמה, אלא מפני שהיה לו לישפט את העם כנראה מהכתובים, ואם כן המלך בנדאי הוא מחוייב לדון ולשפט את העם, שאם תאמר שאינו יכול לדון אם כן למה הוא נקרא מלך.

But for us, we still need to question several verses that clearly prove that judgment belongs rightly to the king, and on the contrary, the king is obligated to carry out justice. I.e., maybe it's not accurate to say that just because a king may not be judged, that he may not judge others. **For it is written, "Give the king Your judgments,"⁵ "He shall judge the poor of the people,"⁶ "By justice a king upholds the land,"⁷ "Give us a king to judge us."⁸ Also, there were the six prohibitions of "You shall not judge unfairly; you shall show no partiality; you shall not take bribes,"⁹ "You shall not plant for you any kind of sacred tree,"¹⁰ "You shall not establish a monument for you,"¹¹ "You shall not slaughter to the Lord your God an ox, or a lamb, [in which there is a blemish],"¹² that were written upon the throne of Solomon, as our rabbis of blessed memory said,¹³ of which the first three pertain to a king's responsibility to judge the people.**

Even Solomon did not ask for wisdom except because he needed to judge the people, as appears from the verses. If so, the king is certainly obligated to judge and render judgment for the people, for if you say that he cannot judge, then why is he called king?

ולפי זה קשיא לן טובא נמי על האי דאמרין בש"ס בפרק ב' דסנהדרין, דאי אין דנין אותו איך יכול לדון, והפתיב "התקוששו וקושיו" וכו', ומאי קושיא דהא כינון שהמלך מצווה לישפות את העם, הנה ליה כמו מי שקבל עליו קרוב או פסול דדינו דין, וכתב בהגהת שלחן ערוך חשן משפט (סימן נ"ב) שאם הם ממונים בעיר או טובי העיר אינו יכול לחזור בו. ופירש ספר מאירת עינים אפילו אם קבלם לדון ועשו פשרה או בשאר טעות עכ"ל. וכן כתב שם הכנסת הגדולה ועיי"ש. ופשיטא ודאי דלא גרע כח המלך מטובי העיר, ובנדאי שיש לנו לומר דדינו דין אפילו אם טעה. והכי נמי יש לנו לומר אף על פי שאין דנים אותו שיהיה יכול לדון שכן הוא משפט המלוכה שלא לדקדק אחרי המלך ושלא לדון אותו, כדי שלא יולזלו בכבודו, שאם אהא אומר מדקדקים אחרי המלך ודנים אותו, אם כן המלך אינו מלך כלל, דהא קיימא לן כל דינא דמפקין מיניה ממונא בדינא לא דינא הוא, ואיך יתקיימו פלהו קראי דלעיל "מלך במשפט יעמיד ארץ" וכו'.

According to this, it is also very difficult for us to understand what is said in the Talmud in chapter 2 of Sanhedrin (18a), regarding a king of the House of David, for if they do not judge him, how can he judge, as it is written, "Gather yourselves and be gathered," etc. What is the difficulty? For since the king is commanded to judge the people, it is like one who accepts

⁵ Ps. 72:1.

⁶ Ps. 72:4.

⁷ Prov. 29:4.

⁸ I Sam. 8:5.

⁹ Deut. 16:19.

¹⁰ Deut. 16:21.

¹¹ Deut. 16:22.

¹² Deut. 17:1.

¹³ Deut. Rabbah 5:6.

upon himself a relative or one disqualified as judge, that his judgment is valid. It is written in the glosses to Shulchan Aruch, Choshen Mishpat (siman 22, se'if 1) that if they are appointed in the city, or the leaders of the city, he cannot retract. The *Sefer Me'irat Einayim* commentary on Choshen Mishpat explained: "Even if he accepted them for judgment and they made a compromise, or in other errors."¹⁴ So too the *Knesset HaGedolah* commentary wrote there; see there.

It is certainly obvious that the authority of the king is not less than that of the leaders of the city, and certainly we must say that his judgment is judgment, even if he erred.

Also, we can say that even though they do not judge him, he is able to judge, for such is the rule of kingship, that one should not scrutinize the king, nor judge him, so that his honor not be degraded. For if you say that they scrutinize the king and judge him, then the king is no king at all. For behold, we hold, "Any judge who is summoned to judgment and money is lawfully taken from him is not considered a judge."¹⁵ How then could all the above verses be upheld, e.g., "By justice a king upholds the land," etc.?

אָלֵא נִדְאֵי צָרִיךְ לֹאמֵר כְּדִאֲמַרְיִנּוּ בְּדִין מוֹמְקָה שְׁטָעָה שְׂאָף עַל פִּי שְׁגָרָם לִהְיִי לֵא נִתְכַּוֵּן לְהִזְקֵי. וּפְשִׁיטָא נִדְאֵי שְׂיָפָה פֶּחַ הַמֶּלֶךְ מִפְּלֵהוּ דִּינֵי דְאִיתְמַרוּ בְּמוֹמְקָה, וְהַמְשַׁפֵּט בְּנִדְאֵי רָאוּי לְמֶלֶךְ, וְעַל מְנַת כּוֹן נִתְמַנֶּה לְמֶלֶךְ כְּדִי שְׂיַעֲמִיד הָאֲרִז בְּמִשְׁפָּט. וְאִין הִכִּי נִמְי שְׂאִין דְּנִים אוֹתוֹ לְחִיבּוֹ לְשָׁלֵם בְּמָה שְׁטָעָה, אוֹ לְחִיבּוֹ עַל אֵיזָה עֶסֶק שְׁלוֹ. וּמָה שְׂהִיוּ דְּנִים אֶת הַמֶּלֶךְ קוֹדֵם הַתְּקֵנָה, אֶפְשָׁר שְׂהִיוּ דְּנִים אוֹתוֹ בְּזִמְן שְׂהִיָּה הַמֶּלֶךְ מִתְרַצָּה שְׂיִדּוּגּוּ אוֹתוֹ, וְלֹא אֲמַרְיִנּוּ בְּזִנָּה מֶלֶךְ שְׂמַחֵל עַל כְּבוֹדוֹ אִין כְּבוֹדוֹ מְחוּל, כְּעוֹבְדָא דְדוּד בְּפָרְק הַכּוֹנֵס שְׂשָׂאֵל לְסַנְהֶדְרִין אִם הִיָּה יָכוֹל לְהַחֲלִיף גְּדִישִׁין שֶׁל שְׂעוּרִים מִיִּשְׂרָאֵל לְתַת לְפָנֵי בְּהֵמַתוֹ וְעֵי"ש. וְנִיחָא שְׂפִיר לִישְׁנָא דְקָרָא ד'הַתְּקוֹשָׁשׁוּ וְקוֹשׁוּ" קָשׁוּט עֲצָמָה וְכוּ' דְּמִשְׁמַע דְּבִדְיָהוּ תְּלִיָא מִיִּלְתָּא לִיִּתּוּן רְשׁוֹת לְאַחֲרִים שְׂיִדּוּגּוּ אוֹתָם.

Rather, certainly we must say as it is said regarding an expert judge who erred: although he caused damage, he did not intend to cause damage.¹⁶ Certainly, the authority of the king is greater than all the rulings stated regarding an expert judge. Judgment is certainly fitting for the king, and it is for this very purpose that he was appointed king, that he uphold the Land with justice. Indeed, it is true that they do not judge him to obligate him to pay for his error, or to obligate him regarding some legal issue.

Regarding that they used to judge the king before the decree, as they did with Yannai himself, it is possible that they judged him when the king consented that they should judge him. We do not say here, "A king who forgoes his honor, his honor is not forgone," like the incident of David in the 6th chapter of tractate *Bava Kamma* entitled *HaKones*, when he asked the Sanhedrin whether he could exchange stacks of barley belonging to Israel with stacks of lentils belonging to the Philistines in order to feed his animal; see there.¹⁷ I.e., just because a king heeds the court, doesn't mean that he's forgone his honor.

¹⁴ Me'irat Einayim on Shulchan Aruch, Choshen Mishpat 22:11.

¹⁵ Bava Batra 58b.

¹⁶ Bechorot 28b.

¹⁷ Bava Kamma 60b. David could legally take the lentils from the Philistines, but he needed barley to feed his animal. He didn't know if he could take the barley from Jews and repay them with lentils. The Sanhedrin answered that would be stealing, even if he repaid them the value, and it would be wicked, but as king, if he were to do so, no one could protest.

The wording of the verse “Gather yourselves and be gathered,” meaning “correct yourselves,” is precise, for it implies that the matter depends on them, to give permission to others to judge them. This only applies for kings of the House of David; following the incident with Yannai, the Sages have forbidden judging kings of Israel, even if they were to give permission. As a consequence, kings of Israel may not judge others. The Torah verses instructing kings to judge the people are interpreted as referring only to kings of the House of David.

ומעתה נבא לביאור המדרש הנאמר לעיל על פסוק "כִּי־תבא אֶל־הָאָרֶץ" וכו' "שׁוֹם תִּשִׂים עָלֶיךָ מֶלֶךְ" וכו'. ושואל מלך ישראל מהו שיהיה מותר לו לדון בפני בית דין, דהיינו שיהיה יכול ליתן רשות לאחרים שידינו אותו, ולאנימא דאיפא זילותא דמלכותא, ומלך שמשל על כבודו אין כבודו מחול, ותיירץ כד שנו חכמים מלך לא דן ולא דנים אותו, לא מעיד ולא מעידין אותו.

Now we come to explain the Midrash mentioned above on the verse[s], “When you come into the Land that the L-rd your G-d has assigned to you, and taken possession of it and settled in it, you decide, ‘I will set a king over me, as do all the nations about me,’ you may surely set a king over yourself, one chosen by the L-rd your G-d . . .”¹⁸ [The Midrash] asks: Regarding a king of Israel, what is the law, is he permitted to be judged before a court? That is, that he be able to give permission to others to judge him, and we should not say that there is a degradation of kingship, and that “a king who forgoes his honor, his honor is not forgone.” It answered: Thus did the Sages teach, “A king does not judge and they do not judge him; he does not testify, and they do not testify against him.”

ודברי התנא בנדאי קשו טובא תדא שלא היה לו לומר לא דן אלא אין דנים אותו, דכשאין דנים אותו פשיטא שגם הוא אינו יכול לדון משום "התקוששו", ומכל שכן שהתקנה היתה בשביל ינאי כשהיו דנים אותו לא כשהיה הוא דן. ועוד דאי מיירי התנא במלכי ישראל בלבד כדאיתא בגמרא לא שנו אלא מלכי ישראל וכו', למה תנא סתם מלך לא דן, הנה לו לומר מלך ישראל לא דן וכו'. ועוד דסמיה ליה לא מעיד ולא מעידין אותו, והא זה שייך נמי במלכי בית דוד כמו שכתב הפסוק משנה (בפרק ג' מהלכות מלכים), שאף מלכי בית דוד אינם מחוייבים להעיד בבית דין כדי שלא יהיה להם זלזול לישב בעמידה.

The words of the Tanna are certainly very difficult: first, he should not have said “does not judge,” but rather “they do not judge him,” for when they do not judge him it is obvious that he, too, cannot judge because of “gather yourselves,” and all the more so since the decree was on account of Yannai when they were judging him, not when he was judging.

Furthermore, if the Tanna is referring only to the kings of Israel, as stated in the Gemara, “they taught this only of the kings of Israel,” etc.,¹⁹ why did the Tanna state without qualification “a king does not judge”? He should have said, “A king of Israel does not judge,” etc.

Furthermore, he adds “does not testify and they do not testify about him,” and this applies also to the kings of the House of David, as the *Kesef Mishneh* wrote (Laws of Kings,

¹⁸ Deut. 17:14–15.

¹⁹ Sanhedrin 19a.

chapter 3), that even the kings of the House of David are not obligated to testify in court, so that they not be degraded by sitting while others stand.

אֵלָא וַדַּאי צָרִיךְ לִומר דְּהַתְנָא מִיָּרִי בֵּין בְּמַלְכֵי בֵּית דָּוִד בֵּין בְּמַלְכֵי יִשְׂרָאֵל, אֲמַנְם הָאֵי כְּדַאִיתָא וְהָאֵי כְּדַאִיתָא. וּפִירוּשָׁא דְמַתְנִיתִין קָדָה הוּא, הַמֶּלֶךְ לֹא דֵן כְּשֶׁאֵין דְּנִים אוֹתוֹ כָּלֵל, וְהֵיִינוּ מַלְכֵי יִשְׂרָאֵל, כְּדַאֲמַרִּינָן בְּגִמְרָא מְשׁוּם מַעֲשֵׂה דִּינַאי, הָא אִם לְפַעְמִים דְּנִים אוֹתוֹ כְּשֶׁיִּרְצֶה לְמַחֹל עַל כְּבוֹדוֹ כְּמוֹ מַלְכֵי בֵּית דָּוִד, אָז יְכוּל גַּמִּי לְדוּן.

Rather, one must certainly say that the Tanna is referring both to the kings of the House of David and to the kings of Israel. However, each case follows its own rule. The explanation of the Mishnah is thus: “The king does not judge”—that is, when they do not judge him at all, and this refers to the kings of Israel, as we say in the Gemara, on account of the incident with Yannai.

But if at times they do judge him when he wishes to forgo his honor, like the kings of the House of David, then he too is able to judge.

וְאַחַר כֵּן הִרְגִישׁ הַמְדַרְשׁ וְלָמַד אֵין דְּנִים אוֹתוֹ אֲפִילוּ בְּעַל פְּרָחוּ, וְהֵלֵא אִם הוּא דֵן אֶת אֲחֵרִים קְרִינָן בֵּיהּ "הַתְּקוּשׁוּ וְקוּשׁוּ", וְהֵיךְ לְנוּ לְדוּן אוֹתוֹ אִף בְּלֹא רְשׁוּתוֹ, וְתִירֵץ שְׂפָשְׁהוּא אֵינוּ רוֹצֶה לְמַחֹל עַל כְּבוֹדוֹ שְׁמַע מִינֵה שְׂבָרוּר לוֹ שֶׁהֵדִין עִמוֹ, וְאִף אִם הוּא טוֹעֵה אֵין לְנוּ לְזַלְזֵל בְּכְבוֹדוֹ, שְׂאֵין כָּל בְּרִיָּה יְכוּלָה לְדוּן אֶת הַמֶּלֶךְ וְלִומר לוֹ שְׁטוּעָה אֵלָא הַקַּב"ה וְכוּ'.

Afterwards, the Midrash sensed a difficulty: why is it that they do not judge him even against his will? For behold, if he judges others, then regarding him too we should apply “Gather yourselves and be gathered,” and we should judge him even without his permission. It answered: when he does not wish to forgo his honor, this shows that it is clear to him that the judgment is with him. Even if he errs, we are not to belittle his honor, for no creature can judge the king and say to him that he errs, but only the Holy One, Blessed be He.

וְעוֹד יֵשׁ לִומר שֶׁהַמְדַרְשׁ דְּנִקֵּט מֶלֶךְ יִשְׂרָאֵל לֹא דִּין קָא, אֵלָא רְצוּנוֹ לִומר מֶלֶךְ בֵּית דָּוִד, כְּמוֹ שְׂמַצִּינוּ שְׁהַרְמַב"ם (בְּפָרֶק ה' מֵהַלְכוֹת פְּלִי הַמְדַרְשׁ הַלְכָה ט') כְּתִב מֶלֶךְ יִשְׂרָאֵל וְעִנִּינוּ מֶלֶךְ בֵּית דָּוִד, וְכִתִּב שֵׁם הַפְּסָף מְשֻׁנָּה הַטַּעַם הוּאֵיל שְׂבַעֲוֹנוֹתֵינוּ אֵין לְנוּ עֲכָשְׁיוֹ לֹא מֶלֶךְ וְלֹא שָׂר לֹא נִפְקָא לָן מִיָּדֵי, וְעוֹד דְּמֶלֶךְ בֵּית דָּוִד גַּם הוּא לֹא נִפִּיק מִכָּלֵל מֶלֶךְ יִשְׂרָאֵל.

Furthermore, it may be said that when the Midrash mentioned “a king of Israel,” it was not precise, but its intention was “a king of the House of David.” For we find that Rambam (Laws of the Utensils of the Sanctuary, chapter 5, halacha 9) wrote “king of Israel,” and his intent was “king of the House of David.” The *Kesef Mishneh* wrote there that the reason is, since in our sins we have now neither king nor prince, nothing practically follows from it. Furthermore, a king of the House of David is also not excluded from the category “king of Israel.”

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