

# Zera Shimshon

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## Chapter XXXIX: Chukat (Num. 19:1–22:1)

### Essay 15. Jephthah's argument with the king of the Ammonites

*The Israelites weren't permitted to directly conquer Ammon and Moab, which G-d had assigned to the descendants of Lot.<sup>1</sup> However, those lands were later taken by Sihon the Amorite, and this week's parsha discusses that Israel captured the lands from Sihon.<sup>2</sup> The Haftorah, Judges 11:1–33, relates that over 300 years later, the king of Ammon demanded the return of the lands.*

**"כִּי־לָקַח** יִשְׂרָאֵל אֶת־אֶרֶץ בְּעֻלּוֹתוֹ מִמִּצְרַיִם . . . וְעַתָּה הִשִּׁיבָהּ" וכו'. צָרִיךְ עֵינַי מָה הֵיחָה פְּנוּנַת מְלֶכֶךְ בְּגִי־עֲמוּן לְתַבּוּעַ מִיִּפְתָּח וּמִיִּשְׂרָאֵל שֶׁיִּשְׁיבּוּ לָהֶם חֻשְׁבוֹן וְכָל עָרֵי הָאֱמּוֹרִי שֶׁלְקָחוּ יִשְׂרָאֵל מִיַּד סִיחּוֹן. וְעַל מָה סָמַךְ בְּתַבִּיעָתוֹ זֹאת לְתַבּוּעַ מֵהֶם אוֹתָהּ הָאֶרֶץ שֶׁכָּבַר מִיְהוֹזֵקֶת בְּיָדָם מִכַּפְּמָה שְׁנַיִם וְכִמוֹ שְׁנַאֲמַר "שְׁלֹשׁ מֵאוֹת שָׁנָה". וְהֵלֵא זֶה הֵיא דְרָךְ כֹּל הָעוֹלָם וְכָל הַמְּלָכִים שֶׁהֵם קוֹנִיִּים בְּמִלְחָמָתָם מְדִינּוֹת שֶׁל מְלָכִים אֲחֵרִים, כְּמוֹ שֶׁעָשׂוּ בְּגִי עָשׂוּ לְבְּנֵי הַחוּרֵי שֶׁהִשְׁמִידוּם וַיִּשְׁבּוּ תַחְתָּם, וְכֵן "כַּפְתָּרִים הִצְאִים מִכַּפְתּוֹר", וְלֹא מִצִּינּוֹ שֶׁהִבְעֵלִים הָרֵאשׁוֹנִים יִחְזְרוּ לְתַבּוּעַ מָה שֶׁכָּבְשׂוּ וּבִפְרָט לְאַחַר עֲבוּר שְׁלֹשׁ מֵאוֹת שָׁנָה. וְאִם נֶאֱמַר שֶׁלְעוֹלָם נִשְׁאַר מְקוֹם תְּבִיעָה לְבְּעֵלִים הָרֵאשׁוֹנִים, הֵלֵא כִּבְר אֱמָרוֹ ו"ל בְּגִישׁוֹן (דָּף ל"ח) עֲמוּן וּמוֹאֵב טָהְרוּ בְּסִיחּוֹן, וְלִפִּי דַת תּוֹרַתְנוּ מְלֶכֶךְ נְכָרִי קוֹנֵה בְּכִיבוּשׁ מְלַחְמָה כְּדֵאִיתָא הֵתָם, וּמָה מְקוֹם הֵיךָ לָהֶם לְחִזּוֹר וּלְתַבּוּעַ.

“The king of the Ammonites replied to Jephthah’s messengers, **‘When Israel came from Egypt, they seized the land that is mine, from the Arnon to the Jabbok as far as the Jordan. Now, then, restore it peaceably.’**”<sup>3</sup> **It is necessary to investigate: What was the intention of the king of the Ammonites to demand from Jephthah and from Israel that they return to them Heshbon and all the lands of the Amorites that Israel took from the hand of Sihon? What did he rely upon in making this claim, to demand from them this land that had already been in their hands so many years? As it is said, “While Israel has been inhabiting Heshbon and its dependencies, and Aroer and its dependencies, and all the towns along the Arnon for three hundred years, why did you not try to recover them at that time?”**<sup>4</sup> **Isn’t it the way of the world and all kings, that they acquire by their wars the lands of other kings, as the sons of Esau did to the Horites, that they destroyed them and settled in their place,**<sup>5</sup> and similarly the

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<sup>1</sup> Deut. 2:9, 2:18–19, 2:37.

<sup>2</sup> Num. 21:21–24.

<sup>3</sup> Judges 11:13.

<sup>4</sup> Judges 11:26.

<sup>5</sup> Deut. 2:22.

“Caphtorim, who came from Crete,” who destroyed the Avim in Gaza.<sup>6</sup> We don’t find the original owners returning to demand what was conquered, and particularly after three hundred years. Even if it’s said that there forever remains a claim for the original owners, didn’t [the rabbis] of blessed memory say in tractate Gittin (page 38a), “Ammon and Moab became purified through [their conquest by] Sihon.” According to the law of our Torah, a non-Jewish king acquires through war, as is brought there, which is why the lands then lost their status of belonging to the descendants of Lot, and the Israelites were able to take them from Sihon. What grounds was there for [the Ammonites] to return and make a claim?

וְנִשְׁ לֹמַר דְּאַעְקָרָא דְּדִינָא פִּירְכָּא, שְׁמֵלֶךְ בְּגִייעֵמוֹן לֹא הִיָּה רוֹצֵה לְהוֹדוֹת שְׁעֵמוֹן וּמוֹאָב טְהָרוּ בְּסִיחוֹן, וְהַטַּעַם הוּא מִפְּנֵי שְׁסִיחוֹן לֹא נִלְחָם עִם מוֹאָב בְּמִלְחָמָה בְּמִנְהַג הָעוֹלָם רַק בְּדֶרֶךְ גְּזִילָה וְאוּגְס וְלִסְטִיּוֹת, שְׁאַמְרוּ ז"ל שְׁסִיחוֹן שָׁכַר בְּלַעַם שְׂיָבֵא לְקַלֵּל מֶלֶךְ מוֹאָב לִיקַח אֶת אֶרְצוֹ מִיָּדוֹ, וְאִין זֶה דֶּרֶךְ מִלְחָמָה רַק דֶּרֶךְ גְּזִילָה, וְקָרָע אֵינָה נִגְזַלְת וְלַעוֹלָם הִיא בְּחֻזְקָת בְּעֻלְיָה עוֹמֶדֶת. וְאִם כֵּן יִשְׂרָאֵל שְׁלָקְחוּ אֶת הָאֶרֶץ מִסִּיחוֹן הִיָּה לָהֶם לְהַחְזִירָה לְמוֹאָב וְלַעֲמוֹן, כְּדֹאִיתָא בְּפֶרֶק י' דְּקַמָּא הַמְצִיל מִן הַגִּיּוֹס אוֹ וּמִן הַנִּבְהָר וּמִן הַלִּסְטִין אִם נִתְיָאֲשׁוּ הַבְּעָלִים הָרִי אֵלָיו שְׁלוֹ. וּפְרָשִׁינָן בְּגִמְרָא הַתָּם הָא סְתָמָא לָא מִיָּאֲשׁ, וּמוֹקִי לֵה בְּנִכְרִים דְּסְתָמָא לָא מִיָּאֲשׁ מִשּׁוּם דְּדִינֵי בְּגִמְתֵי וּפְרָשׁ רַש"י בְּבִצְאָנָה וּבְזָרוּעַ עכ"ל. וְאִם מוֹאָב וְעֵמוֹן לֹא נִתְיָאֲשׁוּ בְּסִיחוֹן וְנִשְׁ לָהֶם לְיִשְׂרָאֵל לְהַחְזִירָה לָהֶם.

It can be said that he disputed this fundamental argument, as the king of the Ammonites did not want to admit that Ammon and Moab were purified through Sihon. The reason for his belief is because Sihon did not fight with Moab in a war according to the world’s custom, only by means of theft, force, and armed banditry. [The rabbis] of blessed memory said that Sihon hired Balaam, who came to curse the king of Moab, to take his land from his hand.<sup>7</sup> This is not the way of war, only the way of theft, and the Torah law is that land cannot be stolen, and it is forever in the right of possession of its owners.<sup>8</sup>

If so, argued the king of the Ammonites, then Israel—who took the Land from Sihon—are obliged to return it to Moab and to Amon. This is as it is brought in the 10<sup>th</sup> chapter of tractate Bava Kamma: “[Regarding] one who salvages [something] from a troop [of soldiers], or from a river, or from bandits, if the owners [of the item] despaired [of retrieving it], they are his, i.e., they belong to the salvager].”<sup>9</sup> But it’s explained there in the Gemara that in an ordinary case, [the owners] don’t despair of retrieving it; thus, they would retain their property rights. It’s interpreted thus for gentiles, that they don’t despair, because they judge a case and impose the verdicts with a strong hand. Rashi explains this to mean haughtily and with force. Even Moab and Ammon didn’t despair regarding Sihon, and thus they argued that Israel had to return [the Land] to them.

<sup>6</sup> Deut. 2:23.

<sup>7</sup> Num. Rabbah 20:7.

<sup>8</sup> Bava Kamma 114a.

<sup>9</sup> Mishnah Bava Kamma 10:2; Bava Kamma 114a.

ובנה נבין תשובת פתח אשר שלח אליו "ועתה ה' אלהי ישראל הוריש את האמרי מפני עמו ישראל ואתה תירשנו". וקשה והלא פונת מלך בני-עמון לא היתה לרשת את האמרי, רק ארץ השבון וארנון מפני שהיו שלו מתחלה ונקראו ישראל כמציל מן הגיזים ומן הלסטים, ומהו זה ששלח לו "ואתה תירשנו". ועוד מה רצה לרמוז לו באמרו "הלא את אשר יורישך כמוש אלהיך" וכו' "ואת כל-אשר הוריש" וכו' שגראה כמו תנאי ופשרה שעושים ביניהם ומה צורך לפשרה זו. ועוד קשה מה הוסיף לו פתח באמרו "ועתה הטוב טוב אתה מבקך בן-צפור" וכו'.

**In this way we'll understand Jephthah's answer that he sent to [the king of the Ammonites]: "Now, then, the L-rd, G-d of Israel, dispossessed the Amorites before His people Israel, and you should possess it?"<sup>10</sup>**

**A difficulty is: Wasn't the intent of the king of the Ammonites not to inherit the land of the Amorites, only the land of Heshbon and Arnon, because they were his initially? Didn't he consider Israel as having salvaged the land from the troop of soldiers and from the robbers? Also, what is the meaning that he sent to him the message, "and you should possess it?"** This sounds as though Jephthah was accusing the king of the Ammonites as wanting to recover the Amorite lands.

**Also, what did [Jephthah] intend to hint to [the king of the Ammonites] by saying, "Do you not hold what Chemosh your god gives you to possess? Everything that the L-rd, our G-d gives us to possess, we will possess."<sup>11</sup>**

**Another difficulty is what did Jephthah add for him by saying, "Besides, are you any better than Balak son of Zippor, king of Moab? Did he start a quarrel with Israel or go to war with them?"<sup>12</sup>**

וניש לומר לפי שמלך בני-עמון היה סובר ששרקע לעולם בחזקת בעליה עומדת וסתמא לא מניאש, והיה להם לישראל להחזירה כמציל מן הגיזים ומן הלסטים וכו', ששרקע אינה נגזלת. משום הכי השיב לו "ה' אלהי ישראל הוריש את האמרי" וכו' "ואתה תירשנו", שכתבו התוספות בפרק ג' ד[ספיה] [דף ל' ע"ב] דאף השרקע היכא דנשתמע שם בעליה ממנה אף על גב דלא מניאש נעשה צדוק על ספינתו שגאבדה בים ובחזקת הגזלן קיימא עכ"ל. ואף כאן הקב"ה "הוריש את האמרי מפני" בני-ישראל כלומר שפך נשתמע שם עמון ומואב מחשבון ומארנון, וכדכתיב "כי חשבון עיר סיוחן מלך האמרי הוא", ונקראת על שם סיוחן מלך האמרי, "ואתה תירשנו" בתמיה זה אינו מן הדיון.

**It can be said that because the king of the Ammonites was of the opinion that land is forever in the right of possession of its owners, that in an ordinary case, [the owners] don't despair of losing it. Thus, the king of the Ammonites thought, Israel needs to return it, as a salvager from the troop of soldiers and from the robbers, as land is not stolen.**

**Because of this, [Jephthah] answered him, "Now, then, the L-rd, G-d of Israel, dispossessed the Amorites before His people Israel, and should you possess it?"** This is as the Tosafists wrote in the 3<sup>rd</sup> chapter of tractate Sukkah<sup>13</sup> (page 30b):

**Even for land, if the name of the owner is no longer associated with it, then even if [the original owner] says that he had not given up hope, he loses his claim. It is like someone who**

<sup>10</sup> Judges 11:23.

<sup>11</sup> Judges 11:24.

<sup>12</sup> Judges 11:25.

<sup>13</sup> The first edition had "Sotah."

screams upon hearing that his ship is lost at sea, his screaming suggests that he hasn't despaired of recovery, and yet since there is no way to recover the ship, his ownership rights are severed. Thus, in such a case, [the land] is in the possession of the thief.

Even here, the Holy One, Blessed be He, “dispossessed the Amorites before” the Israelites, as if to say that the names of Amon and Moab were no longer associated with Heshbon and Arnon. As it is written, “Now Heshbon was the city of Sihon king of the Amorites, who had fought against a former king of Moab and taken all his land from him as far as the Arnon,”<sup>14</sup> and it is named after Sihon, king of the Amorites, “and you shall possess it?” This is not according to the law!

ועוד לפי הדין שאמה סוכר שלעולם בְּחִזְקַת בְּעֻלְיָה עֹמְדָת גַּם לָהּ יִהְיֶה הַפֶּסֶד בְּדִין זֶה, שְׂאֵם כְּמוֹשׁ אֲלֵהֶיךָ יוֹרִישֶׁךָ אִיזוֹ מְדִינָה בְּאֵלְמוֹת וּבְחִזְקָה לֹא תִהְיֶה אִף הִיא שְׂלֶךְ, וְלִכְפֹּךְ יוֹתֵר טוֹב לָךְ לֹאמֹר שְׂמָה שְׂיִרְשָׁנוּ יִהְיֶה שְׂלֶנּוּ, שְׂדָבָר מוֹעֵט נִגְדַּד מֵהַ שְׂכַבְשֶׁת אֲתָה מְמַלְכִים אַחֲרֵיהֶם וּמֵהַ שְׂאֲתָה עֲתִיד לִכְבוֹשׁ, שְׂאֵם אָנוּ חֲיִינוּ מְחֻזְרִים לָךְ אֵת אֱלוֹי גַּם אֲתָה הֵייתָ מְחֻזְיִיב לְהַחְזִיר מֵהַ שְׂכַבְשֶׁת. אֲלֵא כֹּךְ נִעֲשֶׂה הַדִּין בִּיגִינוּ שְׂמָה שְׂיִרְשֶׁת אֲתָה מְמַלְכִים אַחֲרֵיהֶם יִהְיֶה שְׂלֶךְ וּמֵהַ שְׂיִרְשָׁנוּ אָנוּ יִהְיֶה שְׂלֶנּוּ.

Also, according to the law that you claim that the land forever stands in the right of possession of its owners, you will also lose by this law. For if your god Chemosh had bequeathed any land to you by force, they wouldn't be yours, because they wouldn't have been taken through conventional warfare. Because of this, it's better for you to say that what we have inherited will be ours, as it's a small property compared to what you have conquered from other kings and what you will conquer in the future. Also, if we are obligated to return these lands to you, then you are also obliged to return what you have conquered. Rather, this is how the judgment will be made between us, that what you inherited from other kings will be yours, and what we inherited will be ours.

ועוד כי "הַנֶּכֶדָה רָאָה בְּעֵינֶיהָ" שְׂכָאן בְּמְדִינֹת אֱלוֹי לֹא דִי שְׂנִשְׁתַּקַּע מֵהֶם שֶׁם עֲמוֹן וּמוֹאָב כְּמוֹ שְׂאֲמַרְנוּ אֲלֵא שְׂהִיָּה שֶׁם אִף יְאוֹשׁ בְּעֻלִים, שְׂהָרִי בְּלֶקַח מְלֶךְ מוֹאָב לֹא רַב עִם יִשְׂרָאֵל וְלֹא נִלְחַם בָּם כְּשֶׁהִחְזִיקוּ בְּעָרִים הָאֵלֶּה, דְּשָׁמַע מִינָהּ שְׂכַבְרַת נְתִיבָא שׁוּ מֵהֶם, שְׂאִילוֹ לֹא נְתִיבָא שׁוּ הָיוּ תוֹבְעִים מֵהֶם תְּכַף וּמִדְּ שְׂכָאוּ הָעָרִים הָאֵלֶּה לִיד יִשְׂרָאֵל, וְזֶהוּ "מִדּוּעַ לֹא-הִצַּלְתֶּם בְּעַת הַהִיא"—"בְּעַת הַהִיא" דְּנִקָּא.

Further, “you will see with your own eyes”<sup>15</sup> that for these lands, not only are the names of Ammon and Moab no longer associated with them, as we said, but there was also despair of the owners. For Balak, the king of Moab, did not fight with Israel and did not wage war with them when [the Israelites] held these cities. We hear from this that he had already despaired of recovering them, for if they had not despaired of recovering them, they would have claimed them as soon as they had come into the hand of Israel. This is the meaning of “why did you not try to recover them at that time?”—Specifically “at that time,” when the Israelites first took those cities.

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<sup>14</sup> Num. 21:26.  
<sup>15</sup> II Kings 7:2.