

PETER J. TOMSON

Studies on Jews
and Christians in the
First and Second Centuries

*Wissenschaftliche Untersuchungen
zum Neuen Testament*

Mohr Siebeck

Wissenschaftliche Untersuchungen
zum Neuen Testament

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418



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ISBN 978-3-16-154619-8 / eISBN 978-3-16-156685-1
DOI 10.1628/978-3-16-156685-1

ISSN 0512-1604 / eISSN 2568-7476
(Wissenschaftliche Untersuchungen zum Neuen Testament)

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available at <http://dnb.dnb.de>.

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The book was typeset by Martin Fischer in Tübingen using Times typeface, printed on non-aging paper by Gulde-Druck in Tübingen, and bound by Großbuchbinderei Spinner in Ottersweier.

Printed in Germany.

Table of Contents

Foreword	VII
Abbreviations	XV

I. Halakha and Jewish Self-Definition

The Term Halakha	3
Mishna Zavim 5:12 – Reflections on Dating Mishnaic Halakha	7
Halakhic Letters in Antiquity: Qumran, Paul, and the Babylonian Talmud	21
The Halakhic Systems in Josephus: Antiquities and Life, and Against Apion	41
Divorce Halakha in Ancient Judaism and Christianity	67
‘Devotional Purity’ and Other Ancient Jewish Purity Systems	107
The Names Israel and Jew in Ancient Judaism and in the New Testament	141
The Names Israel and Jew – A Reconsideration	187

II. The Teachings of Jesus and Evolving Jewish and Christian Tradition

‘To Bring Good News to the Poor’: The Core of Jesus’ Gospel	223
The Song of Songs in the Teachings of Jesus and the Development of the Exposition on the Song	235
Parables, Fiction, and Midrash: The Ten Maidens and the Bridegroom (Matt 25:1–13)	253
The Lord’s Prayer at the Faultline of Judaism and Christianity	261

Shifting Perspectives in Matthew: from ‘the House of Israel’ (10:6) to ‘All Gentiles’ (28:19)	279
An Alienated Jewish Tradition in John 7:22–23 Proposal for an ‘Epichronic’ Reading	297

III. Paul and His Place in Judaism

Paul’s Practical Instruction in 1 Thess 4:1–12 Read in a Hellenistic and a Jewish Perspective	317
‘The Doers of the Law will be justified’ (Rom 2:13) For an Adequate Perspective on Romans	347
What did Paul mean by ‘Those who know the Law’? (Rom 7:1)	383
Paul as a Recipient and Teacher of Tradition	393
Christ, Belial, and Women: 2 Cor 6:14–7:1 Compared with Ancient Judaism and with the Pauline Corpus	411
Paul’s Collection and ‘the Saints’ in Jerusalem (2 Cor 8–9) Literary and Historical Questions	457

IV. Historiography and the Import of Early Christian Sources

The Didache, Matthew, and Barnabas as Sources for Jewish and Christian History	501
Josephus, Luke-Acts, and Politics in Rome and Judaea by 100 CE	533
Sources on the Politics of Judaea in the Fifties CE	559
The Epistles of Paul as a Source for the Historical Pharisees	581
Gamaliel’s Counsel and the Apologetic Strategy of Luke-Acts	603
The Gospel of John and the ‘Parting of the Ways’	621
Bibliography	663
Index of Ancient Sources	727
Index of Names	787
Index of Subjects and Significant Place Names	815

Foreword

The present volume gathers up most of the more important studies I wrote on the history and literature of early Jews and Christians over the past 35 years. The idea came spontaneously when Markus Bockmuehl suggested on behalf of the WUNT editors to prepare such a volume. This was a pleasant surprise, an honour to set about doing so, and favourably timed just after my retirement. It was also self-evident to arrange the articles in four sections dealing, respectively, with halakha and Jewish self-identification, the Jesus tradition, Paul's letters, and early Jewish and Christian history – areas on which I have spent most of my time in terms of research. It also seemed attractive then to see a historical process reflected, starting in early Judaism, leading from Jesus to Paul, and on to the process during which Jews and Christians eventually got separated. Indeed I considered such a main title as, 'A Shared and Ruptured History', but I dropped it again because it would be too heavy for such a collection and would not quite cover its contents either.

The truth is that the history of Jews and Christians in the early centuries of the era has been very much on my mind for the last decade or so, and some studies published here were written in preparation of the project I am nowadays involved in, together with Joshua Schwartz: 'Jews and Christians in the First and Second Centuries'. Obviously, one core issue in that history is the process by which Judaism spawned both rabbinic Judaism and apostolic Christianity over the course of the first century, only to see them formally separated by the end of the second.

Looking back through the spectrum of one's collected studies, however, does evoke an intellectual history. Mine gained speed at the University of Amsterdam, where from the late 1960s on I followed New Testament classes of Jan Sevenster and Joost Smit Sibinga, as well as at the Catholic Theological School in Amsterdam with Ben Hemelsoet's Pauline seminar where we read Krister Stendahl and E. P. Sanders, as also, for many years, the seminars in Talmudics of Yehuda Aschkenasy who introduced us to the halakha involved in Jewish prayer. Once in every few years, Aschkenasy also invited Shmuel Safrai and David Flusser of the Hebrew University in Jerusalem to teach concentrated summer courses in rabbinics, ancient Jewish history, and New Testament. They in fact became my most important teachers, and I made sure to join their seminars, along with other

courses in ancient Jewish history and literature, when I was able to spend a year at the Hebrew University in 1978–1979. Following that, I also got involved in the publication project they headed, ‘Compendia Rerum Iudaicarum ad Novum Testamentum’ (CRINT). A full circle is closing to the extent that CRINT is also the series where the project ‘Jews and Christians in the First and Second Centuries’ is being published. Precisely so, I see it as a welcome turn of events that the studies here assembled appear elsewhere, in effect offering the opportunity to throw some methodological sidelight on the project. It also seems fitting that the volume appears in the Germany-based series that accommodates so much of the rejuvenated combination of Jewish and early Christian studies.

When I alighted in academic publishing, three big scholarly debates were running. There was the debate about ‘the New Testament and anti-Judaism’ which in Germany and the Netherlands was especially intense during the 1970s,¹ though it had been pioneered by James Parkes already before the Second World War and by Jules Isaac immediately after it.² In the second place, there was the debate on ‘Judaism and Hellenism’. It was triggered by Martin Hengel’s eponymous study,³ but as such, it was the high point in a debate that had been going on since the late nineteenth century. It had been preceded, e.g., by Saul Lieberman’s important studies, and it was carried on by such prominent critics as Arnaldo Momigliano and Menahem Stern.⁴ These debates sharpened my awareness of a serious conflict between ‘Jews’ and ‘Christians’ (never mind conventional terminology) running through some New Testament writings and of the interplay of ‘Hellenism’ and ‘Judaism’ (!) that somehow conditioned the emergence of both Christianity and rabbinic Judaism. Over time, Momigliano became my lodestar in this matter, along with Stern and Flusser, allowing me also to value the great importance of Hengel’s work.

The third debate was about ‘rabbinics and the New Testament’ or ‘rabbinics and historiography’; it was more opaque and much more difficult to manage. At the time, many established scholars felt intimidated by Jacob Neusner’s rabid polemics, while his books were flooding their libraries’ bookshelves by the dozen. Neusner’s almost personal fight was first of all with ‘Jerusalem’, i.e., the Hebrew University, where E. E. Urbach and Shmuel Safrai, among others, showed themselves not impressed by his voluminous output. It was almost im-

¹ By way of example: Eckert–Levinson–Stöhr, *Antijudaismus im Neuen Testament?* (1967), with top notch German-language contributors including David Flusser. Very influential was Ruether, *Faith and Fratricide* (1974), translated as *Nächstenliebe und Brudermord* (1978).

² Parkes, *Conflict* (1934); Isaac, *Jésus et Israël* (1948); cf Baum, *The Jews and the Gospel* (1961).

³ Hengel, *Judentum und Hellenismus* (1969)/*Judaism and Hellenism* (1974).

⁴ Lieberman, *Greek in Jewish Palestine* (1941) and *Hellenism in Jewish Palestine* (1950); reviews by Stern and Momigliano of Hengel, *Judentum und Hellenismus*.

possible to stay aloof from the polemic, and CRINT was definitely bombarded into the ‘Jerusalem’ camp.⁵ So was I, by the looks of it, and fallout of the debate can be detected in some of the following studies. With the disappointing quality of some of Neusner’s work being exposed⁶ and the polemics since abating, the way was cleared to make progress again and to soberly evaluate positions on both sides of the trenches. So much for a chapter of typical primates’ behaviour in academia.⁷

Meanwhile, much of my time was being consumed by academic teaching and administration at the Faculty of Protestant Theology in Brussels, as also by extensive editing work for CRINT. This was when most of the following studies were written. Then, good advice of an old friend and a grant from a Belgian research fund led to a five-month study leave in 2010. It occasioned a new departure in my research. Perched on a hilltop (‘Tantura’) between Jerusalem and Bethlehem, the ecumenical institute for advanced theological research Tantur offered both intellectual quiet and political challenge, facilitating the first formulations of the project Joshua Schwartz and I had started together. A seminar paper given at the Hebrew University, titled ‘Pliny the Younger, R. Eliezer, and some others in between: Romans, Jews, and Christians in the Early Second Century’, developed into an article which I was happy to publish together with Joshua Schwartz.⁸ Meanwhile, the basic idea kept growing, and it resulted in the one study expressly written for this volume, ‘The Gospel of John and the Parting of the Ways’.

What was new now became a main stay of our project. The history of both Jews and Christians in the first two centuries, and more importantly, their complex interaction, can only be adequately assessed by continuously referring to the larger history that enveloped and impressed them both: the Roman empire evolving to its maximum strength during this very period. It is obvious to think of the three Jewish revolts against Rome and their aftermath that occurred in a timeframe of just 65 years, even if the precise impact such upheavals have on society is always difficult to quantify. Also, it may not be as strange as it seems to associate the execution of Jesus and a number of his followers at Roman hands with the destruction by the Romans of Jerusalem and its Temple 40 years later,

⁵ See Neusner’s shamelessly dismissive review of CRINT 2.3.1, *The Literature of the Sages, First Part*, in *JBL* 107 (1988) 565–567.

⁶ Cf Lieberman’s review of Neusner’s Yerushalmi translation, *JOAS* 104 (1984) 315–319 and Shaye Cohen’s review of his *Are there Tannaitic Parallels to the Gospels?*, *JOAS* 116 (1996) 85–89. Neusner’s latter work was an attack on the work of his (and Cohen’s) erstwhile *doktorvater* Morton Smith, *Tannaitic Parallels of the Gospels* – Smith’s dissertation which was written, in Hebrew, at Hebrew University.

⁷ More in the Introduction to Schwartz–Tomson, *Jews and Christians ... The Interbellum*, 2 f.

⁸ Schwartz–Tomson, ‘When Rabbi Eliezer was Arrested for Heresy’.

not as theological symbols, but as formative moments in an overarching, continuous historical development. In fact the study on the ‘Parting of the Ways’ just mentioned is one of the places in the volume where this new principle is put most squarely into practice. In this perspective, it is also likely that the foundation of Aelia Capitolina on top of Jerusalem and the devastating revolt it provoked represents a decisive turning point that left Jews, Christians, and their mutual relations totally changed forever.⁹

A second-degree result of this new approach is that the grand debates mentioned above lose much of their obsessive power and gain in accuracy and, so to say, in optical resolution. Viewed in the chronological framework of Roman history, it seems natural to interpret early rabbinic texts historically with the help of early Christian documents, and vice versa. Thus one of the emphases of the project about ‘Jews and Christians ...’ ended up providing the title of section four in the present volume: ‘Historiography and the Import of Early Christian Sources’. As a matter of fact, the section contains five studies that grew out of the project, including the brand-new one just mentioned. Finally, the debate on ‘Hellenization’, which mostly regards the last two centuries BCE, takes a different turn in the two centuries following, merging with the novel, more political process of ‘Romanization’.

The articles have been updated to varying degrees. Most are reprinted with only minor additions in square brackets in the footnotes, documents to the state of my knowledge at the time. One of the early footnotes to each article states its pre-history, earlier publication, and permission to republish if applicable, and the original page numbers are indicated in square brackets. Translations of the Bible follow the New Revised Standard Version, with occasional adaptations to the context at hand. Unless otherwise indicated, translations of other works are my own. All of this also goes for the five papers originally written in French or German and which I have now translated into English. The paper on ‘Devotional Purity’ grew over the years but was never published before, and as I said the one on ‘The Parting of the Ways’ was created *de novo*, although not *ex nihilo*. Finally, the paper on the names ‘Israel’ and ‘Jew’ continued to develop in stages after its publication in 1986, along with the evolving discussion. In the end I decided, however, that it is more transparent to reprint it as first published, with supplementary documentation where fitting, and to relegate discussion and advancing insight to a ‘Reconsideration’.

Thus the book came into being in its four sections. Section I is mainly about halakha. This is a major dimension of Jewish life both past and present. It is little

⁹ See preliminary considerations in the introduction to Schwartz–Tomson, *Jews and Christians ... The Interbellum*, 12–15.

known among Christian scholars, although it is essential also for understanding Jesus and Paul, and so I devoted my MA and PhD work to this subject.¹⁰ The study on ‘Mishna Zavim 5:12’ in fact re-uses source-critical and redaction-critical materials from my MA thesis, while responding to an invitation to join the ongoing discussion on the literary and historical qualities of rabbinic literature. The paper on ‘Halakhic Letters’ was written as a contribution to a conference on ancient Jewish letters to which I was invited on account of my analysis of the halakha in Paul’s letters; it also draws in the halakhic letter from Qumran (4QMMT) that at that moment was circulating in a ‘pirated’ edition, as well as the scattered evidence of the halakhic letters utilised by the ancient rabbis. A conference on Josephus in Paris inspired me to analyse ‘The Halakhic Systems in Josephus’, with the interesting conclusion that while Josephus’ *Antiquities* and *Life* signal loose fidelity to Pharisaic-rabbinic halakha, his *Against Apion* draws on a quite different, much more severe system. A conference on ‘The New Testament and Rabbinic Literature’ I was honoured to organize along with my colleagues of the University of Leuven included a section on halakha, of which my paper on ‘Divorce Halakha in Ancient Judaism and Christianity’ was a part. The paper on ‘Devotional Purity’ has been long in coming, as I said; it proposes to view the purity rules involved in Jewish prayer as a ‘system’ separate from levitical purity, converging as it seems with Hellenistic purity usages.

The long study on ‘The Names Israel and Jew’ arose from the discussion on anti-Judaism in the New Testament and especially in the Gospel of John mentioned earlier. In retrospect, I found the result to be far from perfect, but I like the article for its wide scope and the amount of valuable information it contains. Therefore, as I said, I provided it with a ‘Reconsideration’ taking account of subsequent discussions and gave it a place of its own at the end of section I. The alternating use of ‘Israel(ite)’ and ‘Jew’ in Jewish and early Christian sources remains a fascinating and infinitely complex phenomenon, and it also appears to relate to the problem of the meanings of *Ioudaios/Yehudi* which the original article discussed inadequately. Finally, late in the day, I decided to preface section I with a fragment from a bibliographic survey of ‘Halakha in the New Testament’ which is not contained in this volume. The fragment offers clarification of the meaning and origins of the key word, ‘halakha’.

Section II seriously purports to deal with traditions deriving from the historical Jesus. Indeed, yet another intuition that had dawned on me is that the methodological scepticism on this subject we have been brought up with would ease once we study these traditions in their likely Jewish surroundings. Rabbinic literature in itself being difficult to handle in this connection, the Qumran scrolls

¹⁰ MA thesis, *Mitsvat netilat yadayim li-seuda: Het wassen van de handen voor de maaltijd*; PhD dissertation, *Paul and the Jewish Law: Halakha in the Epistles of the Apostle to the Gentiles*.

have come in to create a whole new situation. David Flusser was one of the first to grasp the immense implications, which is why the first study in this section is dedicated to him. It connects the new Qumran evidence to the interaction with Deutero-Isaiah that is pre-eminently documented in the basic gospel tradition. The study on ‘The Song of Songs in the Teachings of Jesus’ is the fruit of years of thinking and teaching on the matter, among other places in our MA seminar in Brussels. It is thrilling to see apparent echoes from the teachings of Jesus finding their natural place in the history of Jewish literature. The paper on the ‘Parable of the Ten Maidens’ is a recent outgrowth of the same study, engaging among others with David Flusser and his work on parables. ‘The Lord’s Prayer’ represents another core element of the Jesus tradition, grown out of varied Jewish prayer usages but eventually made into a touchstone of Christian over against Jewish identity. In the evolving conflict with Judaism, early Christian tradition developed a tension vis-à-vis the Jesus tradition. This is poignantly visible in the Gospel of Matthew which also evinces a strong Jewish-Christian sediment. Due precisely to this contrast, the ‘Shifting Perspectives in Matthew’ seem to provide an unexpected glimpse of Jesus’ hesitant attitude towards foreigners. Even starker is the contrast felt in the Gospel of John, where the deadly conflicts over Jesus’ healings on Sabbath contradict the implications of a halakhic midrash also ascribed to him (John 7:22f), strongly resembling a midrash of Rabbi Eliezer. The contrast is uncovered via an experimental ‘epichronic reading’.

Section III opens with a study explicitly exploring the section’s theme, ‘Paul and His Place in Judaism’. It analyses the halakha contained in the parenthesis of 1 Thessalonians, continuing the quest of my book on Paul and the Jewish Law, and it ends on a description of the typically ‘Christian’ topos of *filadelfia*. In a rather more theological sense, the Jewish law is a major element in the lively discussion on ‘the new perspective on Paul’, to which ‘The Doers of the Law will be Justified’ was an invited contribution. It is about Rom 2, where indeed it is not halakha that draws the attention but the ‘synagogue language’ Paul adopts in his subtly balanced argument addressing the complicated relationship of Jewish and gentile Christians in the late 50s CE. There follows a ‘short study’ on the much-discussed ‘limping simile’ of the woman freed from the law of marriage once her husband dies (Rom 7:1–4). With ‘Those who know the Law’ Paul appears to mean those who know the ‘apostolic halakha’ on marriage and divorce he also cites in 1 Cor 7:39, but this time round using this law metaphorically. Another short study, published recently, summarises the evidence of ‘Paul as a Recipient and Teacher of Tradition’ – halakhic and mystic-apocalyptic Jesus traditions, in this case. Two larger papers were occasioned by a conference organized at the University of Leuven in 2009, titled ‘Jewish Perspectives on Paul: 2 Corinthians and Late Second Temple Judaism’. ‘Christ, Belial, and Women’ is about the fascinating coalescence of Christology, apocalyptic demonology, and a (relatively) women-friendly attitude in the would-be ‘Qumranic insert’ in 2 Cor

6:14–7:1. The other paper was written together with Ze'ev Safrai, an authority on the socio-economic history of Judaism in the Roman period, and it grew out of an idea he once floated to write something on Paul's collection for 'the Saints' in Jerusalem. The occasion induced me to take position on the much-debated literary and historical character of 2 Corinthians.

The study opening section IV begins by stating that section's theme: the significance of Christian documents for early Jewish and Christian history. Next to the Qumran texts, Philo, and Josephus, the early Christian writings are an important source, especially where the rabbinic texts leave us in the dark. This is often not realised in studying first and second century history, which I suspect is partly due to the debate about the historical value of rabbinic literature mentioned earlier. The paper was part of our historiographic project and was published in its first conference volume, on 'How to write the history' of Jews and Christians in the early centuries. The same goes for 'Josephus, Luke-Acts, and Politics'. It was a contribution to our conference on the hotly debated questions relating to the 'Yavne period', which we ended up dubbing 'The Interbellum 70–132 CE', i. e., the transition period between multiform pre-70 Judaism and the quite different post-136 situation. Each in its own way, these papers find early Christian texts to confirm the appearance of a 'rabbinic' movement around 100 CE.

In a way, another method or another 'scholarly rhetoric' is applied in this section than in earlier ones. Rather than using Jewish sources to elucidate Christian history, early Christian documents are used as a help to document developments in Jewish society and its external relations. This is also the gist of the study on 'Sources on the Politics in Judaea in the 50s CE'. Responding to a paper Martin Goodman gave at the conference on '2 Corinthians and Late Second Temple Judaism' mentioned above, it argues that information contained in Galatians and Romans makes it likely that the narrative of a steadily worsening situation in Josephus' War describes an actual development, rather than just imitating Thucydides. Next, another full circle closes when one realises that Paul's letters read in their Jewish background are our only written 'Source for the Historical Pharisees', rather than the works of Josephus with his somewhat doubtful Pharisaic credentials. The study on 'Gamaliel's Counsel' does not follow the same method, but I wanted to include it for its links with 'Josephus, Luke-Acts, and Politics', and I put it here for lack of better place. By contrast, 'The Gospel of John and the Parting of the Ways' is fully in place at the end of this last section. Taking note that the 'Benediction of the Heretics' cannot be the means by which Christians were excommunicated by the Jews (cf John 9:22), the article tries a new angle. The Gospel of John, testifying to a painful conflict with Jewish leaders, is contemporaneous to the rabbis linked to a passage in Tosefta Hullin that inculcates social distance from followers of Jesus. In line with our project, the comparison is contextualised using two Roman reports involving Christians that date to the same period, i. e. early second century CE. On this proposition, the

Johannine passages confirm the rabbinic reports as to the excommunication of the Christians, which furthermore seems to be an aspect of the 'Romanisation' of nascent rabbinic Judaism.

One could wish to point out circularity in the fact that while in earlier studies I am trying to illuminate early Christian texts using Jewish sources, in these later ones I do the opposite. In my view, this is a question of orderly scholarly rhetoric. Depending on the argument, one can use Paul's letters as sources that document Jewish phenomena in the first century CE. One can also use Jewish sources to elucidate Paul's letters, Qumran sources to demonstrate the pre-history of certain elements, and rabbinic sources to highlight the early existence of others. In the framework of one argument, one should not do both. This book contains different types of argument and hence different ways of comparing earlier and later, or Jewish and Christian, sources. At the end of the day, our discipline involves working with a network of literary and archaeological sources which mutually illuminate each other. An important field yet to be laboured more intensely in this connection is the combined comparison of Qumranic, early Christian, and rabbinic sources.

It remains to state my heartfelt gratitude to the colleagues who in various ways have significantly contributed to the genesis and quality of the following, in addition to those already mentioned. They are, in alphabetical order: Reimund Bieringer, Markus Bockmuehl, the late Willem Burgers, Matthijs den Dulk, Werner Eck, Jan Willem van Henten, William Horbury, Benjamin Isaac, Jan Joosten, Jan Lambrecht, Mireille Hadas-Lebel, Pieter van der Horst, Tamar Kadari, Menahem Kister, Emmanuel Nathan, Eric Ottenheim, Didier Pollefeyt, Ishai Rosen-Zvi, Ze'ev Safrai, Joshua Schwartz, Joseph Verheyden, and Boaz Zissu. Last not least, I offer my sincere thanks to the Editors of the WUNT series and the publishers of Mohr Siebeck for accepting and producing the book.

Lent 2018

Peter Tomson

Abbreviations

Sources

Abbreviations for biblical books and for Apocrypha and Pseudepigrapha follow the usage of the Society for Biblical Literature, but without italics and full stops. For Josephus, it is (Jewish) War, (Jewish) Ant(iquities), Life, and Ag(ainst) Ap(ion). Qumran sigla follow conventional usage.

The sigla m, t, y, b, followed by the siglum of the respective tractate, indicate, respectively, Mishna, Tosefta, Yerushalmi and Bavli. For Mishna and Tosefta, chapter and paragraph number are given, for the Yerushalmi, also page and column in parentheses (or, if the reference as a whole is in parentheses, page and column after a comma). The Bavli is referenced by folio and page, as usual. ARN a18 / b18 denotes chapter 18 from versions A or B of the Schechter edition.

Transcriptions from the Hebrew are simple and devised to render modern Israeli pronunciation. *Aleph*, *ayin*, and *he sofit* are not rendered usually; *quf* and *kaf*, and *sin* and *samekh*, are not distinguished.

1QS	Qumran cave 1, Serekh ha-yahad / Community Rule
4QMMT	Qumran cave 4, 'Miktsat maasei ha-Tora' = Halakhic Letter
Ah	Ahilot
ARN	Avot de-R. Natan, ed Schechter
Av	Avot
AZ	Avoda Zara
BB	Bava Batra
Ber	Berakhot
Bekh	Bekhorot
BK	Bava Kamma
BM	Mava Metsia
CD	Damascus Document (Covenant of Damascus)
CH	Eusebius, Church History
Dem	Demai
Ed	Eduyot
EkhR	Ekha (Lamentations) Rabba
Er	Eruvin
EstR	Esther Rabba
FrgTg	Fragmentary Targum
GenR	Genesis/Bereshit Rabba, ed Theodor-Albeck

Git	Gittin
Hag	Hagiga
Hor	Horayot
Hul	Hullin
Ker	Keritot
Ket	Ketubbot
Kid	Kiddushin
Kil	Kilayim
Kipp	Kippurim (Tosefta)
LamR	Lamentations/Eikha Rabba
LevR	Leviticus/Wayyikra Rabba, ed Margulies
MaasSh	Maaser Sheni
Mak	Makkot
MegTaan	Megillat Taanit (ed Lichtenstein or ed Noam)
MekRS	Mekhilta de-R. Shimon b. Yohai, ed Epstein–Melamed
MekRY	Mekhilta de-R. Yishmael, ed Horovitz–Rabin
Men	Menahot
MidrGad	Midrash Gadol
Midr Tann	Midrash Tannaim, ed Hoffmann
Mik	Mikvaot
MK	Moed Katan
ms(s)	manuscript(s)
ms x	New Testament, Sinai ms.
ms A	Septuagint, Alexandrian ms.
ms B	Septuagint/New Testament, Vatican ms.
ms K	Mishna, Kaufmann manuscript, ed Beer
ms S	Septuagint, Sinai ms.
Naz	Nazir
Ned	Nedarim
Nid	Nidda
NumR	Numbers/Bamidbar Rabba
Pea	Pea
Pes	Pesahim
PesR	Pesikta Rabbati, ed Friedmann
PesRK	Pesikta de-Rav Kahana, ed Mandelbaum
RH	Rosh ha-shana
RuthR	Ruth Rabba
San	Sanhedrin
SER	Seder Eliahu Rabba
Shab	Shabbat
Shek	Shekalim
Shev	Sheviit
Shevu	Shevuot
ShirR	Shir ha-Shirim Rabba (Song Rabba)
SifDeut	Sifrei Deuteronomy/Devarim, ed Finkelstein
SifNum	Sifrei Numbers/Bamidbar, ed Horovitz
Sifra	Sifra de-vei Rav, ed Weiss
SifZDeut	Sifrei Zuta on Deuteronomy, ed Kahana

SifZNum	Sifrei Zuta on Numbers, ed Horovitz
Sot	Sota
T12P	Testaments of the Twelve Patriarchs
Taan	Taanit
Tam	Tamid
TanB	Tanhuma, ed Buber
Tanh	Tanhuma, traditional ed
Tem	Temura
TevY	Tevul Yom
TgOnk	Targum Onkelos on the Tora
TgPsYon	Targum Pseudo-Yonatan
TgSong	Targum on Song of Songs
TgYon	Targum Yonatan on the Prophets
Toh	Toharot
Uk	Uktsin
Yad	Yadayim
YalShim	Yalkut Shimoni
Yev	Yevamot
Zav	Zavim
Zev	Zevahim

Journals, Series, Publishers, Data Bases

AB	Anchor Bible
AGAJU	Arbeiten zur Geschichte des antiken Judentums und des Urchristentums (continued as AJEC)
AJEC	Ancient Judaism and Early Christianity (continuation of AGAJU)
<i>ANRW</i>	<i>Aufstieg und Niedergang der römischen Welt</i> , ed H. Temporini – W. Haase
ARGU	Arbeiten zur Religion und Geschichte des Urchristentums
ATANT	Abhandlungen zur Theologie des Alten und Neuen Testaments
<i>BAR</i>	<i>Biblical Archaeology Review</i>
BDAG	Danker, <i>Greek-English Lexicon</i>
BDR	Blass–Debrunner–Rehkopf, <i>Grammatik</i>
BIS	Biblical Interpretation Series
BIU	Bar-Ilan University
BIRP	Bar-Ilan Responsa Project
BJ	Bible de Jérusalem
BJS	Brown Judaic Studies
BZNW	Beihefte zur <i>ZNW</i>
CAP	Cowley, <i>Aramaic Papyri</i>
<i>CBQ</i>	<i>Catholic Bible Quarterly</i>
<i>CBR</i>	<i>Currents in Biblical Research</i>
CCSL	Corpus Christianorum series latina
<i>CHJ</i>	<i>Cambridge History of Judaism</i>
<i>CII</i>	Frey, <i>Corpus Inscriptionum Iudaicarum</i>
<i>CPJ</i>	Tcherikover–Fuchs, <i>Corpus Papyrorum Judaicarum</i>

CUP	Cambridge University Press
DJD 1	Barthélemy–Milik, <i>Discoveries</i>
DJD 2	Benoît–Milik–Devaux, <i>Les grottes de Murabba'ât</i>
DSD	<i>Dead Sea Discoveries</i>
EJ	<i>Encyclopedia Judaica</i> , 16 vols plus suppl. Jerusalem, Keter 1972
EKK	Evangelisch-katholische Kommentare zum Neuen Testament
ET	English translation
EvTh	<i>Evangelische Theologie</i>
FJCD	Forschungen zum jüdisch-christlichen Dialog
FJTC	Mason, <i>Flavius Josephus, Translation and Commentary</i>
FS	Festschrift
GCS	Griechische Christliche Schriftsteller
GLAJJ	Stern, <i>Greek and Latin Authors on Jews and Judaism</i>
HNT	Handbuch zum Neuen Testament
HUP	Harvard University Press
IES	Israel Exploration Society
JANES	<i>Journal of the Ancient Near Eastern Society</i>
JBL	<i>Journal of Biblical Literature</i>
JCP	Jewish and Christian Perspectives
JJS	<i>Journal of Jewish Studies</i>
JRS	<i>Journal of Roman Studies</i>
JSJ	<i>Journal for the Study of Judaism</i>
JSP	<i>Journal for the Study of the Pseudepigrapha</i>
JSIJ	<i>Jewish Studies Internet Journal</i>
JSJS	Journal for the Study of Judaism Supplements
JSNT	<i>Journal for the Study of the New Testament</i>
JSS	<i>Journal of Semitic Studies</i>
JTS	<i>Journal of Theological Studies</i>
KEK	Kritisch-exegetische Kommentar zum Neuen Testament
KJV	King James Version
LCL	Loeb Classical Library
LSG	Louis Segond Bible
LSJ	Liddell–Scott–Jones, <i>Lexicon</i>
MJS	Münsteraner Judaistische Studien
MM	Moulton–Milligan, <i>Vocabulary</i>
MPG	J. P. Migne, <i>Patrologiae cursus completus, series Graeca</i>
MPL	J. P. Migne, <i>Patrologiae cursus completus, series Latina</i>
MS	Mohr Siebeck
NedTT	Nederlands Theologisch Tijdschrift
NHL	Robinson, <i>The Nag Hammadi Library</i>
NOTA	Novum Testamentum et orbis antiquus
NovT	<i>Novum Testamentum</i>
NPNF	Nicene and Post-Nicene Fathers
NRSV	New Revised Standard Version
n.s.	new series
NTD	Neues Testament Deutsch
NTS	<i>New Testament Studies</i>
OTP	Charlesworth, <i>Old Testament Pseudepigrapha</i>

OUP	Oxford university Press
<i>PIASH</i>	<i>Proceedings of the Israel Academy of Sciences and Humanities</i>
PW	Pauly-Wissowa
<i>PWCJS</i>	<i>Proceedings of the World Congress of Jewish Studies</i>
<i>RB</i>	<i>Revue biblique</i>
<i>RHPR</i>	<i>Revue d'histoire et de philosophie religieuses</i>
RSV	Revised Standard Version
SAP	Sheffield Academic Press
SBLSP	Society of Biblical Literature Seminar Papers
SC	Sources chrétiennes, Paris, Cerf
<i>SCI</i>	<i>Scripta Classica Israelica</i>
<i>SH</i>	<i>Scripta Hierosolymitana</i>
SPB	Studia Post-Biblica
SJLA	Studies in Judaism in Late Antiquity
<i>SJT</i>	<i>Scottish Journal of Theology</i>
STDJ	Studies on the Texts of the Desert of Judah
Str-Bill	Strack–Billerbeck, <i>Kommentar z NT</i>
StUNT	Studien zur Umwelt des Neuen Testaments
<i>TDNT</i>	Theological Dictionary to the New Testament (ET of <i>ThWNT</i>)
<i>ThWNT</i>	<i>Theologisches Wörterbuch zum Neuen Testament</i>
TOB	Traduction œcuménique de la Bible
TuU	Texte und Untersuchungen
UCal	University of California
UP	University Press
Vdh&R	Vandenhoeck & Ruprecht
WBC	Word Biblical Commentaries
WBG	Wissenschaftliche Buchgesellschaft
WdF	Wege der Forschung
WJK	Westminster John Knox
<i>ZNW</i>	<i>Zeitschrift für die Neutestamentliche Wissenschaft</i>
<i>ZPE</i>	<i>Zeitschrift für Papyrologie und Epigraphik</i>
<i>ZTK</i>	<i>Zeitschrift für Theologie und Kirche</i>

I. Halakha and Jewish Self-Definition

The Term Halakha

Since the rise of the *Wissenschaft des Judentums* in the early nineteenth century, scholars have been calling the phenomenon of Jewish law by the term ‘halakha’.¹ The generic use of the word was new in the scholarly world, but it linked up with ancient rabbinic usage where someone could be called בקי בהלכה, ‘expert in halakha’.² In this sense the word denotes the discipline or genre of legal study and legislation,³ as distinct from aggada or non-legal learning.⁴ Its recognition as a separate and independent field of learning was typically found in Pharisaic-rabbinic circles, though not exclusively so. We find it documented in the Mishna and related texts that express the specific aim to formulate the various elements of religious law independently from Scripture. We see it also, however, in the singular set of ‘independent’ laws contained in the Damascus Document⁵ that reflects the same aim, although in a different form and outlook.⁶ Thus the genre ‘halakha’ existed by the second century BCE, even though the term itself surfaces first in rabbinic literature.

While retaining the rabbinic distinction vis-à-vis aggada, modern scholars adopted the term halakha, extending its application also to include ‘halakha’

¹ This article reformulates an introductory section of my survey, ‘Halakha in the New Testament’ (2010). For the *Wissenschaft des Judentums* see e.g. Zunz, *Die gottesdienstlichen Vorträge* (1832; cf Vahrenhorst, *Nicht schwören*, 24f); Frankel, *Darkhei ha-Mishna* (1849). The study of halakha, however, was not a first concern of the pioneers of the *Wissenschaft*, see the critical judgment by Ginzberg, ‘Significance’, 78.

² mEr 4:8. Sages are seen יושבין ודנין בהלכה (tYev 14:5) or יושבין ודנין בהלכה (tNaz 5:1; tSan 7:10; tAhil 4:14).

³ Cf also the phrase tHag 3:9, משם הלכה יוצאת ורוחת בישראל, ‘from there (i. e. from the court of 70 in Jerusalem) halakha would issue among Israel’.

⁴ Cf באגדה בקי, ‘expert in aggada’, bBK 55a.

⁵ CD 15–16 and 9–14. Schiffman, ‘Damascus Document’, though hesitant whether to call these by ‘the talmudic term halakha’ (275), gives a trenchant description including the headings of the various subjects (280–283). Hempel, *Laws*, insists on distinguishing the laws of ‘community organisation’ from general ‘halakha’, and similarly Davies, ‘Halakhah at Qumran’ wishes to distinguish between the ‘halakha’ in CD and the ‘radical revision of legislation’ in IQS. However, one can perfectly speak of ‘sectarian halakha,’ cf my review of Hempel, *Laws* in *JSJ* 34 (2003) 327–329. Cf also Baumgarten, ‘La loi religieuse’, 1012.

⁶ Ginzberg, *Unknown Jewish Sect*, sees it as a deviant Pharisaic sect whose halakha ‘is presented in a form which is different from any pattern known from Talmudic sources’ (404f). More outspokenly, Baumgarten, ‘La loi religieuse’ underlines differences of substance with Pharisaic-rabbinic law. Schiffman, ‘Damascus Document’, 283 emphasises variety within the scrolls.

found reflected in non-rabbinic sources. This usage is spreading since the last three decades, coinciding with a novel interest in halakha in circles of non-Jewish scholars. Some have protested, especially since the word itself has not been found in Qumran texts or other pre-rabbinic sources.⁷ But scholars cannot be prevented from inventing or adapting terminology that usefully describes the objects of their study. We also speak of ‘apocalyptic’ writings, a term widely accepted after its invention in the early nineteenth century, even though it is not without difficulties.⁸ In comparison, the generic scholarly term ‘halakha’ is surely more felicitous.

Apart from extending the application of the term, modern scholarly usage differs in another respect from the ancient one. Where we would designate a set of commandments involving one particular subject by an abstract singular, such as ‘the Sabbath halakha’, the ancient rabbis would rather use the more concrete plural: ‘הַלְכוֹת שַׁבָּת’, ‘the halakhot of Sabbath’.⁹ The plural form also appears in the standard phrase indicating the threesome areas of rabbinic study, ‘מִדְרָשׁ הַלְכוֹת וְאַגְדוֹת’, ‘midrash, halakhot, and aggadot’.¹⁰ Correspondingly, there is the use of the concrete singular to indicate ‘the formulated law’, as in the Hebrew phrase, ‘הַלְכָה כְּדִבְרֵי ר’ אֵלִיעֶזֶר’, ‘the law is as formulated by R. Eliezer’.¹¹ In this construction, the definite singular has no visible article because it is assimilated with the ensuing *he*, as is also seen in a number of other rabbinic utterances.¹²

The word *halakha* itself does not seem to have its origin in Hebrew. The popular etymology from the Hebrew verb הֵלַךְ, ‘to go’ – hence ‘that in which

⁷ Van Uchelen, ‘Halacha in het NT?’ (cf my response in *NedTT* 49, 1995, 190–193); idem, ‘Halakhah at Qumran?’ Meier, ‘Halakha ... at Qumran?’, scrutinising the available Qumran evidence, at 151 n3 observes that though the word is not found, ‘the reality is present abundantly in the Qumran documents’, and therefore, disagreeing with Stephen Goranson, he uses the word to compare ‘the rules for behavior in Qumran and Jesus’ teaching’. Cf Meier, *Marginal Jew* 4: 40f.

⁸ Collins, *Apocalypse*, 1–20 understandably rejects the Anglicised noun ‘apocalyptic’ (cf German ‘Apokalyptik’) as erroneously suggesting the existence of a separate ‘apocalyptic’ trend of thought or ideology. There is less of a problem with the adjective ‘apocalyptic’.

⁹ mHag 1:8, along with other areas of law. Cf ‘Sabbathalacha’ in the German title of Doering, *Schabbat*.

¹⁰ mNed 4:3, and see Bacher, *Terminologie* 1: 42f.

¹¹ mNid 1:3 (ms K). Epstein, *Nosah*, 687f expresses the intuition that such phrases are additions to the Mishna and proves such in one case. The phrase is ubiquitous in the Talmudim: 200× in the Yerushalmi; 463× in the Bavli (BIRP).

¹² Cf the saying הלכה כדברי בית הלל בכל מקום (tYev 1:13), or, הלכה כדברי בית הלל בכל מקום (tHag 3:11): ‘In every respect, the halakha is as formulated by the School of Hillel’; and הלכה למושה מסיני, ‘The halakha as revealed to Moses at Sinai’ (on the hyperbolic meaning of which see Safrai, ‘Halakha’, 180–185). Cf also כן היתה הלכה בירם ושכחוהו (yPea 1, 16b; yShab 1, 3d; etc.); נעלמה ראה מעשה (yShab 19, 17a); נעלמה הלכה ממנו (yPes 6, 33a). Cf also the curious saying, ראה מעשה ונזכר הלכה (yShab 19, 17a; bPes 66a; bSan 82a), which seems to have been corrected by the scribe in yPes 6 (33a): כיון שראה את המעשה נזכר את ההלכה. Cf similar phrases in Bacher, *Terminologie* 2: 53f. – I am indebted to Menahem Kister and Jan Joosten for sharing their linguistic expertise in this matter.

Israel walks¹³ – seems secondary at best. Instead, various Aramaic and Akkadian backgrounds have been proposed.¹⁴ Thus Saul Lieberman has suggested that rabbinic הלכה derives from the Aramaic technical term הלך, in the emphatic mode הלכא, a masculine noun from Persian administrative usage ultimately deriving from Akkadian *ilku/alku/alāku* and meaning ‘service’, ‘tariff’, ‘tax’, or ‘rule’;¹⁵ it is thus used in Ezra 4:13, 20; 7:24.¹⁶ Although suggestive, this is not satisfying in view of the Aramaic equivalent הילכתא used in the same period. Like הלכה it is a feminine and is frequently found in the Talmud.¹⁷ More adequately, therefore, Tzvi Abusch has made the proposal to view both Aramaic הילכתא and Hebrew הלכה as loan words modelled on the Akkadian feminine noun *alaktu*, ‘course, sign, decree’.¹⁸ To the extent that this is acceptable, הלכה appears to be another survival from the Persian period preserved in rabbinic parlance, similar to a number of administrative terms of Aramaic, Persian, and/or Akkadian origin whose earliest mentions are mainly found in rabbinic literature.¹⁹ The avoidance of the word at Qumran could be due to the sect’s avoidance of termi-

¹³ Thus e. g. Jacobs–de Vries, ‘Halakhah’. Also mentioned by Safrai, ‘Halakha’, 121 along with a reference to Lieberman’s explanation (below n15). Similarly Meier, ‘Halaka ... at Qumran?’, 150 n2 prefers a Hebrew origin in view of the frequent OT usage of הלך followed by phrases like תורה, חוק, מצוה etc.

¹⁴ Adding the Aramaic root הלך, Bacher, *Terminologie* 1: 42 explains הלכה as ‘Gang, Schritt, Weg > Brauch, Sitte, Satzung’. For late Palestinian Aramaic, Sokoloff, *Dictionary of Jewish Palestinian Aramaic*, 165 adduces Christian Palestinian Aramaic הלכא, ‘walk, way’.

¹⁵ Lieberman, *Hellenism*, 83 n3 (cf Safrai, above n13), still followed by Tomson, ‘Halakhic Evidence’, 132 n7.

¹⁶ Koehler–Baumgartner, *Lexicon*, s. v. derive הלך from Akkadian *ilku/alku/allūku/alāku*, from which they think also derived old Persian *harāka*. Frye, *Heritage*, 113f, referring to the bankers’ house of Murashu, also mentions Persian *harāka*, a land tax. The Akkadian connection is denied by Driver, *Documents*, 70, but confirmed by Stolper in his cuneiform study on the Murashu archives, *Management*, 50: ‘Taxes are summarized by the term *ilku*, service’, and 60 n46: ‘Babylonian *ilku* is rendered by Aramaic *hlk* [הלכא]’. The rabbis knew this meaning, see EstR petihta 5, הלך זו אנגריא (*ἀγγαρῆα*, i. e. forced labour); bNed 62b, הלך זו ארנונא (*annona*, tax paid in kind) – both referring to Ezra 4:13; and cf GenR 64.9 (p711), footnote.

¹⁷ Esp in the Bavli and related texts and indicating, significantly, ‘the prevailing halakha’. Cf also yKil 4 (29c), מותר לרוע, הלכתא: מותר לרוע, and yKid 3 (64d), הלכתא כר’ טרפון; but cf GenR, Vilna ed 33.3, הלכתא רבבלאי, ‘Babylonians’ halakha’; TgOnk Gen 40:13, בהלכתא קרמיתא, ‘like the earlier custom’. Cf the amazing combination in bMK 12a, למאי הלכתא, הלכות מועד כהלכות כותים בהלכה. לומר שהן עקורות (following note) Abusch (following note) points out that the meaning ‘law’ is restricted to Jewish Aramaic.

¹⁸ Abusch, ‘*Alaktu and Halakhah*’, esp 35–42. Jan Joosten writes me that he thinks Abusch’s theory ‘speculative but possible’.

¹⁹ Cf the administrative functions from the Temple, גזבר or המרכל and אמרכל (mShek 5:2), Persian loan words denoting ‘administrator’ and ‘treasurer’; and חזן (mTam 5:3), Aramaic – Persian (?), ‘overseer’. המרכל has been found in a non-sectarian Aramaic Tobit fragment from Qumran (4Q196 fr 2:6–7), see Fitzmyer, ‘Preliminary Publication’. For Iranian backgrounds see Greenfield, ‘Iranian Loanwords’; Shaked, ‘Iranian Loanwords’.

nology of post-biblical vintage, preferring their own somewhat artificial ‘biblical Hebrew’.²⁰

Following modern scholarly usage, we shall use the term ‘halakha’ to indicate the phenomenon of Jewish law as reflected in rabbinic documents and any other Jewish and Judaeo-Christian writings. The use of one single concept for such a range of documents, to be sure, is not meant to imply homogeneity. The idea of ‘the halakha’ as a homogeneous system of laws encompassing all areas of Jewish life is primarily of medieval vintage, exemplified in Maimonides’ monumental codification.²¹ To the extent, however, that Judaism in Antiquity was multiform, it is obvious that halakha in that period must be viewed as a variegated, unsystematic whole of laws and customs. Most concretely, the evidence of the Qumran scrolls in addition to the rabbinic texts gives us an idea of the possible range of variety. It follows that when studying ancient halakha, we must be prepared to accommodate any amount of differences within a larger whole, as well as any degree of development over the successive periods.

²⁰ Observation made by Prof. David Flusser in a seminar, pointing out that they preferred ‘biblical’ *היון* over *מזון* – *μαμωνᾶ* as used in the traditions of Jesus and of the rabbis, except in a few cases that slipped their mind. Jan Joosten kindly refers me to his ‘Hebrew, Aramaic, and Greek’, where at p360 he observes that the Qumran writers continue the biblicising ‘pseudoclassicism’ that developed from the Persian period on.

²¹ Maimonides, *Mishne Tora*. Cf the survey articles (though still restricting themselves to rabbinic law) by Elon, ‘Codification of Law’, and Jacobs–de Vries, ‘Halakhah’.

Mishna Zavim 5:12 – Reflections on Dating Mishnaic Halakha

An investigation into the historical and literary background of the text to be discussed here is of interest in several respects. It will lead us to a thrilling episode in Jewish history, which at the same time was a painful event in the history of the halakha. It is also of direct relevance to the literary history of the Mishna, the theme of the present publication. Finally, there are important implications for the study of the New Testament, although these will not be made explicit here.*

On Methods

Being alert to these various connections is not of mere personal interest; in my view, it is essential to an adequate approach both of ancient texts and historical questions. Therefore it is encouraging, for example, that there is a growing interest in the Jewish backgrounds of the New Testament. Equally encouraging are the repeated warnings against the uncritical use of isolated rabbinic traditions as historical sources. The only question is, what is critical? Literary and historical criticism operates on methodical criticism of one's own axioms and results. In this respect, I have serious questions regarding the self-declared champion of critical study: Jacob Neusner. The emphasis here, however, will not be on polemics, but on the study of the details in which alone these matters are decided.¹

Thus our investigation into the dating of a mishnaic halakha implies some reflection on method. It is proposed here, much in line with basic historical criticism, that evaluation of the literary significance and historical background of a certain textual unit or literary phenomenon must always be based on com-

* [Invited paper for a workshop 'Mishnah' in 1988 at the University of Amsterdam with the stated aim to pay special attention to Neusner's work. The paper was published as 'Zavim 5:12 – Reflections on Dating Mishnaic Halakha', in Kuyt-Van Uchelen, *History and Form*, 53–69 and is here reprinted with slight emendations. Implications for NT studies were elucidated in my MA thesis, *Mitsvat netilat yadayim li-seuda*.]

¹ For polemics see Neusner, *Reading and Believing*. A choice of scholars are criticised for naively quoting rabbinic traditions as historical sources, instead of verifying their historical reliability. Nowhere, however, in Neusner's own *Law of Purities* is such methodical historical criticism even attempted. Regarding 'the details' of the declaration by Neusner, *ibid.* vol 21, xiii, with reference to his teacher Morton Smith.

parison with a range of other sources. This also regards historical theories about the development of the halakha and its literary formulation. Nothing is as detrimental as the [54] atomising and isolating of data from their literary and historical context.

Methodical criticism is needed and is even essential, but it should not be allowed to turn into scepticism as to the possibilities of historical research. The very moment it turns into scepticism, criticism is no longer methodical. Often, ‘text-immanent’ or ‘synchronic’ methods of analysis are then proposed as the only means of stating something sensible about our ancient texts. These non-historical methods, however, can result in serious misjudgments if they are not related to and checked against the results of historical criticism.² Rather, they may be seen as specialized instruments to be applied in view of specific questions, and the answers they yield can contribute greatly to the larger task of critical study. Methods should never be taken absolute. They are means towards a greater end: our understanding of ancient texts on their own terms and within their own contexts.

Zavim 5:12 – Introductory

Let us now review our text:

These render *teruma* (heave-offering) unfit: (1) he who eats food unclean in first remove; (2) and he who eats food unclean in second remove; (3) and he who drinks unclean liquids; (4) and he who immerses his head and the greater part of his body in drawn water; (5) and a clean person upon whose head and the greater part of his body there fell three *logs* (c. 1,5 L) of drawn water; (6) and a book (of Scripture); (7) and the hands; (8) and the *tevil yom* (one who immersed for purification but still must await sunset); (9) and foods and (10) vessels which have been rendered unclean by liquids. (mZav 5:12) [55]

Some words of explanation. The issue is the purity of *teruma*, heave-offering, i. e. that part of the harvest which must be given to the priests and consumed by

² In my view, Schäfer, ‘Research into Rabbinic Literature’ reflects such scepticism, resulting in the view of rabbinic literature as an unorganized collection of manuscript fragments. Schäfer makes, however, an illegitimate generalization from the Heikhalot literature, a specific group of very fluid texts, comparable to the *Derekh Erets* literature or the synagogue prayers (on the latter see the exemplary literary-historical study by Heinemann, *Prayer*). The situation with the ‘main’ collections is quite different. There is no healthy reason to question the possibility of treating the Mishna as a coherent document represented in various textual traditions and reflecting developing historical circumstances (i. e. the history of the halakha). Schäfer’s words about Epstein and Lieberman as representing the ‘traditional-halakhic approach’ which in the end is ‘systematical-theological, not historical-literary’ (139f) are gratuitous and shallow to anyone who seriously studies their achievements. [See also the response by Chaim Milikowski, ‘Status Quaestionis’, and Schäfer’s reply, ‘Once again the Status Quaestionis’, as well as the survey of the whole discussion in Goodman–Alexander, *Rabbinic Texts*, 51–88.]

them in ritual purity.³ Insofar as the biblical commandment of *teruma* appears to have been widely observed,⁴ and these rules about its purity have been existing before 70, they must have been of importance for large parts of the predominantly agrarian population.⁵ According to biblical law (Lev 22:3–7), sanctified food could be made impure by a source of impurity, such as a *zav*, i. e. someone suffering from a flux, or by something which has been in touch with such a source. In the first case, the food is unclean in first remove, and in the latter case, unclean in second remove. *Teruma* could be defiled by yet a third degree. That stage is what is called *pasul*, ‘unfit’: it is unclean but does not render unclean. This was not included in the biblical rules, but was derived from them as a logical precaution.⁶ Such defilement in third remove could originate from a ‘regular’ source of impurity mentioned in the Bible. The purpose of our text is to list ten additional special categories which ‘render *teruma* unfit’. Elsewhere, as we shall see, they are termed ‘words of the Scribes’, i. e. non-biblical laws.⁷

Two of these additional categories are of immediate historical interest: ‘a book’ and ‘the hands’. There is a well-known discussion, which must have taken place not long after 70, about ‘which books render the hands unclean’, i. e. were declared unclean because they were read in the community as sacred scriptures (mYad 3:3–5). This implies the principle itself to have been in existence for some time at that moment. And indeed, the principle is the subject of a discussion between the Sadducees and the Pharisees, which is preserved towards the end of the same tractate (mYad 4:6).

This leads us immediately into the historical and literary questions about mZav 5:12. Two theoretical observations may clarify our approach.

A distinction must be made between the successive stages of the development and formulation of a halakha, and of the halakha in general, in ancient Judaism. Only by exception, halakha was decided [56] and issued by legislation. The normal procedure was that halakha originates and grows within the community at large.⁸ A certain custom would originate within some group, from causes and occasions which are generally very hard to get by. Successively, it could grow accepted by the larger community. A case in point are the so-called *kedushot*, hymnic doxologies with a mystical colouring, which are a part of the community prayers. These *kedushot* must have originated in esoteric circles, but have

³ Num 18:9–11; Deut 18:4; Lev 22:1–16; mTer 4:3; 1:6; 2:1.

⁴ See Safrai, ‘Religion in Everyday Life’, 819 and n4.

⁵ On the degree of observance of the purity laws before 70 see the ground-breaking study by Alon, ‘The Bounds of the Levitical Laws of Cleanness’.

⁶ mSota 5:2 testifies (a) that the third remove for *teruma* was an ancient rule already for Yohanan ben Zakkai but (b) that only in the days of R. Akiva was it linked to Scripture.

⁷ The Bavli, bShab 14b, disputes this as regards the *tevil yom* on the grounds of Lev 22:7. See discussion by Epstein, *Nosah*, 592f, and cf Albeck, *Mishna* 6: 457.

⁸ See Safrai, ‘Halakha’, 163–168, in discussion with E. E. Urbach. Safrai also discerns a real influence of midrash on the creation of halakha, *ibid* 146–163.

gradually grown towards their wider acceptance in the Amoraic period.⁹ The third stage, which in the case of prayers was not reached since they were fixed and written only in the post-talmudic period, is the formulation of the custom into a halakha and its gathering up in to the Mishna or Talmud.

A second theoretical viewpoint regards the formulation process of the Mishna itself. It seems most adequate to the literary texture of the Mishna to assume the existence of four redactional layers, corresponding to four generations, which each in succession formulate the mishnayot of a preceding generation.¹⁰ Thus the first layer, formulated at Yavne by R. Eliezer and R. Yohshua and their colleagues, reflects the mishnayot of the last generation of the Temple period. And the fourth and most prominent layer, which was formulated, along with the extant Mishna, by R. Yehuda ha-Nasi, contains a selection of the mishnayot of the pupils of R. Akiva: R. Yehuda, R. Meir, R. Yose and R. Shimon. This theory explains two prominent facts about the Mishna: the name of the redactor himself is hardly mentioned at all, and it contains tractates which describe the procedures in the Temple in the past tense with very few later additions (Middot, Tamid, Kinnim). The prominence and the distinct character of the fourth layer indicate the great influence of R. Akiva on the development of the Halakha and the formulation process of the Mishna.¹¹ [57]

Zavim 5:12 and the ‘Eighteen Decrees’

After these preliminaries, we can unfold the historical and literary questions about mZav 5:12. When did the halakhot contained in it originate? When did they attain to formulation in a halakha or mishna? And when did this formulation receive its present context in the Mishna?

The two Talmudim give a clear-cut answer to the first two questions, which of course had a decisive influence on commentators and historiographers. The ten categories of mZav 5:12 would have belonged to the so-called ‘18 decrees’ re-

⁹ Heinemann, *Prayer*, 145–147.

¹⁰ The following summarizes the theory of Abraham Goldberg as set forth in his two chapters, ‘Mishna’ and ‘Tosefta’.

¹¹ Axiomatically, Neusner declares source criticism impossible: ‘The redactor ... radically revised (his materials), obliterating the evidence of *sources*, that is, major and prior, already-redacted collections of materials’ (*Law of Purities* 21: 17f). Strack–Stemberger, *Einleitung*, 133–136 [= Stemberger, *Einleitung*, 134–138] on the one hand embraces this hypercritical view of Neusner’s on previous redactions, but at the same time assumes that the *material* used by the redactor, i. e. single mishnayot, did originate in the successive stages, Yavne – Usha – final redaction. On second thought, however, this must imply traces of previous redactions to have been preserved. Proof is to be found in mishnayot beginning with connective phrases which are senseless in their present context. See Safrai, ‘Oral Torā’, 77, referring to mMak 2:8, and see Albeck, *Mishna* 4: 288 *ad loc.* mZav 5:3 is another example, see below.

Index of Ancient Sources

Hebrew Bible and Septuagint

<i>Genesis</i>	97
1	406, 408n60, 447
1:2	228
1:10	128
1:17	76, 84
1:27	96, 446
2	98n115, 447
2:16	345
2:18–22	446
2:24	84n62, 96, 96n108
3:13	384n9
4:10	590
5:1f	446
5:22–24	486
5:22	327n71
6:9	327n71
7:9	84
9	26
9:6	257n17
10:2	320
12:1–5	470n48
14:13	149n25
14:13 LXX	149n25
15:5	587
15:6	357n37, 363
17:1	327n71, 437n124
17:5	587, 589
17:7	587–589
17:12	304
18	343
23:13	333n106
39–43	149n25
46:27	430n87
49:8	170, 171n120
49:13	333n106
49:25f LXX	471

<i>Exodus</i>	149n25, 260, 488n113
1–10	149n25
11:4	246, 258
11:6	258
12:2	47n32, 238
12:3	430
12:11	239, 258
12:16	488n113
12:29	246, 258
12:41	240
15	236
15:2	495
15:17–18	442
15:24	596n71
16	304
16:4	596n71
16:18	470
19:3	429, 433n102
19:6	484n91
19:10–15	114n41
19:15	129
19:25	433n102
20:14	333
21:2	149n25, 150n30
21:10	60n90
21:16	62n102
21:22f	60
21:22	60n93
21:37–22:3	62n101, 62n102
22:24	336n123
22:25	336n123
22:27	382n151, 611
22:30	484n90, 491
23	488n113
23:15f	61
23:15	61n99
27:17	147n20
28:25	488n113
29:38–42 LXX	50n43

29:44	484n89	23:11	48, 50n41
30:17–21	125, 136	23:16f	48
30:30	484n89	23:16 LXX	50n41
31:14	304, 497n146	24:10–11	164n85
31:15	302n15	26:11–12	441
31:16	304	26:11	441, 442
32:8	11	26:12	327n71
32:28	11n16		
34:15	168, 169	<i>Numbers</i>	488n113
35:2	302n15	1:16	488n114
40:2	147n20	5:13	88n75
47:18	147n20	5:22	426n63
		6:8	492
<i>Leviticus</i>	43, 120, 120n68	15:35	302n15
8:4	430n86	16:2	488n114
11–16	120n68, 121	16:7	484
11–15	116n54	18:9–11	9n3
11	121n74	19	116n54
11:31a	121n74	19:11	113
11:31b	121n74	19:19	113
11:38	591, 591n51	21:17	595
11:44	484n90	21:18	595
11:45	484n90	24:17	511n48
15:1–15	119n64	25:8	474n58
15:16–18	112, 119n65	25:11	474n58
15:16	128n111	26:9	488n114
15:19–30	119n64	27:11	590n46
15:31–33	116n55	28:25	488n113
17–25	336	36:8	590n46
18–20	120n68, 121		
18	240n27	<i>Deuteronomy</i>	43, 354n35, 645
18:2	336	4:9f	129
18:19	336	5:14	340
18:21	156n53	6:4	496
19:2	484n90	6:5	426
19:11–13	62n101	7:6	484n91
19:13	341n158	8:10	119n61
19:19	413	11:22	487n104
19:35f	62n101	13:7	332n100
20	240n27	14:2	491
20:7	484n90	14:21	484n91
20:26	484n90	15	341
21:6	484n90, 491n126	15:12	149n25
21:7	44n19	17:6f	645n109
22:1–16	9n3	17:7	451
22:2	491n126	17:12	645n109
22:3–7	9	17:16	645n112
22:7	9n7	17:17	84

18:4	9n3	28:53	356
18:11	122n76	28:55	356
18:12	122n76	28:57	356
19:15	645n112	30:12	427
19:19	645n109	32:1	228
21:21	645n109	34:10	177n137
22:1–11	58		
22:1	58n80	<i>Judges</i>	
22:2	58n80	5:19	336n121
22:4	58, 58n80	7:16	256n14
22:5	58n80	7:21	256n14
22:6	58		
22:7	58n80	<i>1 Samuel</i>	
22:8	58n80	4	149n25
22:11	58n80	4:17	224n9
22:21	645n109	13	149n25
22:22	88, 645n109	13:19	147n20
22:23–29	61	14	149n25
22:24	645n109	20:26	136
23	448, 449, 449n161	21:6[5]	332n100
23:3–4	448	29	149n25
23:4	419, 449n165		
23:7	146n16	<i>2 Samuel</i>	
23:15	77, 81	1:20	224n10
23:18	44n18	4:10	224n10, 224n11
23:19	635n63	7	440, 442
23:28f	61n99	7:10–14	443
24	73, 79, 81, 82, 86, 88, 89, 91, 93, 94, 94n102, 96, 99, 341	7:10	442
24:1–4	53, 54, 69, 70, 73, 74, 76n24, 77, 82, 82n55, 83, 85, 88n77, 94, 388	7:11	443
24:1–3	73, 81, 433	7:12–14	443
24:1	82, 86, 91, 91n89, 99, 101, 389, 389n25, 594	7:13–14	413
24:2	87, 95	7:14	442, 443, 590, 591
24:2 LXX	388	18:20	224n8
24:3b	81n49	18:22f	224n10
24:4	74	18:22	224n5, 224n11
24:7	645n109	18:27	224n5, 224n8
24:14f	341n158	18:19–31	224n7
25:2f	601n92	<i>1 Kings</i>	
25:3 LXX	601n92	3:16	335n113
25:13–16	62n101	4:9	492
25:24f	404	17:10–24	490n120
28	424	<i>2 Kings</i>	
28:9	484n90	2:11	490n120
		4:9	485
		4:42–44	490n120
		5:2	147n20

5:4	147n20	54:11–14	451n175
6:23	147n20	54:13	343n170
7:9	224n5, 224n10	58:6	227
16:6	145n10	59:17	326n61
18:26	145n12a	60:6	225n14
18:26 LXX	147n18	60:21	226, 226n26, 485n94, 487n102
18:28	145n12a	61	223, 223n*, 226–228, 226n25, 232
<i>Isaiah</i>	53, 226, 228, 229, 231, 232	61:1	225–228
2:3	38n60	61:2	226
2:4	53	61:3	226n26
3:11	358n42	66:2	227
6:9f	637–640	<i>Jeremiah</i>	145n12a, 190, 287
8:22	356	2:3	493
10:20	430n87	2:4	430n87
10:25	356	3:1	80, 88n77, 94n102
25:8	596	3:8	74, 79, 88n77
26	227	7:20	356
26:19	228	18	332n98
27:13	596n73	22:17	336n121
29	227	27:6 LXX	287n36
29:16	332n98	27:29 LXX	358n41
30:6	356	29:1	198n49
35	227	33:11	245
36:11	145n12a	34 (44):1	145n11
40:3	227, 419	34:9	149n25
40:9	225n14	34:14	149n25
41:27	224n9	43 (50):9	145n11
42	227	44:1	145, 198
43:6	442	50:6	287n36
44:5	169	50:29	358n41
45:4	147	51:1 LXX	145n11
46:3	430n87	51:6	356
48:1	141, 147, 185, 430n87	<i>Ezekiel</i>	442
48:1 LXX	147n21a	1	245, 406, 408n60
48:10	172	1:3	115
48:12	147	2:3	147
48:20	147	3:4	147
49:17 LXX	512n56	8:1	147n20
50:1	88n77	8:6	147n20
50:1f	80	8:7	147n20
52:7	224, 225n14, 228	11:17	147n20, 442
52:11	441, 590	16:3	335n113
52:11b–c	441	20:34	441, 442, 590
53:1	638	22:27	336n121
54	451n175		

36	121n73	<i>Zechariah</i>	145n12a, 442, 486
37:27	441, 442	14:5	485
<i>Hosea</i>		<i>Malachi</i>	70, 71, 74, 78n29,
2:4	80, 88n77		78n34, 79n35, 85, 105,
2:7	80		442
2:9	80	2:13–16	69, 79
4:11	98n113, 335n113	2:13	87
5:14	634n58	2:16	68n2, 74, 81, 87, 88n77
6:10	335n113	14:21 LXX	356
6:10 LXX	98n113	<i>Psalms</i>	
10:12	469n45	10:17	118
11:9	88n77	16:3	485, 493, 494
13:14	596	24:1	593
13:17	634n58	27:4	358n41
14:2 ff	88n77	33:15 LXX	343n169
<i>Joel</i>		34:10	485
3:1 (2:28)	440, 440n133, 442	34:15	343n169
3:5	224n13	37:11	226
<i>Amos</i>		41:14	426n63
2:11	492n132	44:23[22]	496
<i>Jonah</i>		44:23	496n145
1:9	149	45:3	320n19
<i>Micah</i>		55:18	266n23, 524n111
1:7	635n63	62:12 (61:13)	358
3:9	430n87	68:25	356
7:5	332n100	83[84]:4f	58n81
<i>Nahum</i>		95	243n35
2:1	224	95:5	224n10
2:1 (1:15)	224n10	97	243n35
3:4–5	440	110:1	407
10:25	356	114:1	430n87
<i>Habakkuk</i>		119:36	336n121
2:3b	362	119:126	30
2:4	357n37, 363	119:176	287n36
2:4b	362	134:2	130, 134n143
2:9	336n121	143:2	373
<i>Zephaniah</i>		146:7f	228
1:14f	355	<i>Job</i>	
<i>Haggai</i>	442	40:10	356
		<i>Proverbs</i>	251, 342n161
		1:17	257n17
		2:64	114n39
		4:8	333n108
		5:8	633

5:15	496	1:1g (LXX)	356
19:16	374n120	2:3	171n120
24:12	358	2:5	155, 155n49
		2:6	155n49
<i>Song of Songs</i>	91, 91n89, 235–238, 236n5–7, 237n11, 238n12, 238n13, 240, 240n27, 242–248, 242n31, 243n35, 244n40, 245n41, 247n52, 249n54, 250, 250n62, 251, 252n67, 258–260, 258n22, 259n24, 260n25, 308n39	3:6	163n81
		5:13	192n21
		6:10	192n21
		8:7	192n21
		8:17	146, 155n51
		9:29	192n21
		9:30	192n21
		9:31	192n21
		10:1–11:1	155
		10:3	192n21
		10:9	155n50
1:2	247n52	10:13	155n50
1:3	248, 249, 249n54, 249n59	11:2–12:6	155
		13:8–14:9	155
1:12	237n10, 241n30, 248, 249, 249n54, 249n59	13:8	155
		13:9	155n50
2:8–14	239, 241, 245, 251	13:13	155n50
2:8–13	239, 251	14:5	155n50
2:8	239, 244, 246, 258	14:15–17	155
2:10–13	242		
2:11–13	259	<i>Daniel</i>	145n12a, 188n6, 356, 418, 423, 485n92, 486n99
2:16	252		
4:8	240	3:12	171n120
5	239	4:14[17]	493
5:2	239, 241n30, 242, 244, 245, 247, 247n51, 250, 251, 256, 256n15, 259	6:11	266n23, 524n111
		7	359n47, 485
5:9	252	7:13	407, 485
7:14	243	7:18	485
8:13	244n40	7:21f	485
		7:22	485
<i>Lamentations</i>		7:27	485
3:64	358n41	8:2	116
		8:24	485
<i>Ecclesiastes (Kohélet)</i>		10:4	116
	251	10:13	418n30
8:5	374n120	10:21	418n30
9:9	495	11:2–4	418n31
10:8	633	12:1	418n30
		12:2	356
<i>Esther</i>	143n7, 145n12a, 149, 154, 155, 157, 175, 188, 192, 342n161, 429–431	<i>Ezra</i>	79n35, 121, 145n12a, 154, 157, 188–191, 188n6, 212
Esther (LXX)	155, 157		

1–3	190, 191	8:6	119n62
1	190	11:4	190n16
3–10	146	11:25	190n16
3:9	190n16	13	449n161
4–6	190, 191	13:11	448
4:12	154n47, 190n13	13:16	190n16
4:13	5, 5n16	13:23–27	146
4:20	5	13:23	154n48, 190n14, 190n15, 191
4:23	154n47, 190n13	13:24	145n12a
5–6	154n47		
5:1	145, 154n47, 190, 190n13, 201	<i>1 Esdras</i>	342n161, 190
5:5	154n47, 190n13	4:39	356
5:8	145	8:10	146n15, 154n47
5:11	190		
6:7	154n47, 190n13	<i>2 Esdras</i>	
6:8	154n47, 190n13	23:1	448
6:14	154n47, 190, 190n13		
7–10	190, 191	<i>1 Chronicles</i>	190, 211
7:6	318n8	4:18	170, 171n120
7:12	190n17, 318n8	9:1	190n12
7:13	146n15, 154n47	9:3	190n12
7:24	5	9:4	190n12
7:26	318n8	16:23	224n9
		22:2	147n20
<i>Nehemiah</i>	79n35, 121, 145n12a, 154, 188–191, 188n6, 203, 212	<i>2 Chronicles</i>	190, 211
1–6	154, 154n48, 175, 190, 191, 211	2:16	147n20
1:1–2	145	30:25	147n20
1:2	190n14	32:18	145n12a
1:6	154n48, 190	34:7	147n20
1:11	154	36	190
2:9	203n74	<i>1 Maccabees</i>	148, 151, 155, 157, 162, 174, 175, 193, 200, 201, 206, 208, 210–212, 342n161, 354n35, 362, 367, 562n16
2:10	154n47, 190	1:1–11	210
2:16	190n14, 203	1:15	579n78
2:17	203	1:44–48	575
3:33	190n14	2:19	155
3:34	190n14	2:23	155
4:4	190n12	2:41f	51n52
4:6	190n14	2:42	362n61
5:1	190n14, 190n16	2:45–46	575
5:8	190, 190n14	2:45	381n150
5:14	190n17		
5:17	190n14		
6:6	190n14		
7–13	190, 191		

2:50	362n61	11:22–26	162n75
2:52	362n61	11:27	211n102
2:67	362n61	11:34	211n102
4:2	155	13:41f	199
7:22–24	155	14:38	156n53
8:23ff	146n15	15:14	342
13:41f	200	15:37	149n26, 156n54
13:42	151, 201		
13:47	381n150	<i>3 Maccabees</i>	342n161
14:7	381n150		
14:47	151	<i>4 Maccabees</i>	149, 342n161
<i>2 Maccabees</i>	149, 155–157, 156n53, 175, 193, 194, 198, 199n51, 199n53, 199n55, 201, 204, 204n78, 205, 207, 208, 211, 211n102, 212, 342n161	5:2	149n26
1:1–10a	199	5:4	149n26
1:1–9	204	8:2	149n26
1:1	199n50, 211n102	9:6	149n26
1:6	199n53	9:18	149n26
1:7f	199	13:21	342n160
1:7	199n50	13:23	342n160
1:9	199n53	13:26	342n160
1:10	211n102	14:1	342n160
1:10a	199	14:14f	58n81
1:10b–2:18	199	15:3	356
1:25f	156	15:10	342n160
2:1	199n53		
2:21	156n53	<i>Judith</i>	114, 146, 148, 149, 154, 155, 157, 161, 175, 189, 189n10, 201, 206, 207n82, 211
2:45	381n150	4:1	155
4:13	156n53	8:4	594n64
5:68	381n150	10:12	155
6:6	207n82	12:7–9	114n43
6:7a	45n24, 46n26	12:11	155
7:9	356	12:19	114n43
7:31	149n26, 156n54	14:10	155
8:1	156n53	14:18	155
9:5	156		
9:17	207n82, 211n102	Pseudepigrapha	
10:1–8	199n56	<i>Aristeas</i>	109, 115, 125, 156, 157, 175, 204, 205, 211
10:38	156	1	204
11:6	156	3	156n54a
11:13	149n26, 156n54	30	156n54a
11:16–22	162n75	38	156n54a
11:16	211n102	121	156n54a
		176	156n54a

305	109n9	41:2	77n27
310	204	47:7	157
<i>Bel and the Dragon</i>		<i>Liber antiquitatum biblicarum</i>	
	28, 146n13		591n50
		10:7	595n68
<i>1 Enoch</i>	251, 407, 486, 486n96, 486n97, 486n100	11:15	595n68
		20:8	595n68
1:9	486		
8:2	91n84	<i>Martyrdom (and Ascension) of Isaiah</i>	
37–71 (Similitudes/Parables)	485–487, 486n100		415, 422, 422n54, 440
		1:9	179n143
62:7–8	487	2:2–5	423
70	486	2:7–9	423
<i>2 Enoch</i>		<i>Psalms of Solomon</i>	
22	486		358
		2:2f	359
<i>3 Enoch</i>	486, 486n98	2:3	358n41
4	486	2:15f	359
		2:16	358n41
<i>4 Ezra</i>	157, 175, 521	2:33f	359
1:24	521n99	3:11f	356
1:31	521n99	3:12	356
2:7	521n99	11:1	224n13
2:9	521n99	17:8	358n42
		17:32	343n170
<i>5 Ezra</i>	282, 282n13	17:34	485
		18:1	355
<i>Joseph and Aseneth</i>		<i>Sentences of Pseudo-Phocylides</i>	
	204–206, 211		62, 63, 65n117, 413n8
1:7	204n77		
7:5	204n77		
8:10	204n77	<i>Sibylline Oracles</i>	157n55
22:3	204n77	1:382	224n5
23:13	204n77	2:170–174	157n55
25:5	204n77	3	108
25:7	204n77	3:69	157n55
28:13	204n77	3:591–593	109n8
		4:127	157n55
<i>Jubilees</i>	26, 45, 46, 46n25–27, 56, 121, 121n71, 157, 161, 175, 211, 266, 302n15, 523, 591n50, 654n166	5:161	157n55
		5:249	157n55
3:3–7	84n62	<i>Sirach (Ben Sira)</i>	79n39, 81n50, 82, 82n52, 157, 175, 189, 189n10, 333n105, 342n161
6:23–38	266n22		
39:10	157	7:4–6	206n79

- | | | | |
|--|---|-----------------------|--|
| 7:10 | 464n28 | 5:1 | 435 |
| 7:27[26] | 81n50 | 5:5 | 334n112, 435 |
| 9:13 | 206n79 | 6:1–3 | 435 |
| 13:9–13 | 206n79 | 6:1 | 334n112 |
| 16:12 | 358n42 | | |
| 16:34 | 358n42 | <i>Tobit</i> | 157, 161, 175, 189,
189n10, 196, 201, 206,
211, 469n45 |
| 19:20 | 362n60 | | |
| 25:8 (Heb) | 414n11 | 4:8f | 355 |
| 25:29f[25f] | 81 | 6:13 | 197n41 |
| 28:15 | 81n50 | 7:12f | 165n89, 197n41 |
| 32:23 | 374n120 | 7:14 | 77n28 |
| 35:22/24 | 358, 358n45 | 11:18 | 157n56, 189n11 |
| 36:24/25 | 333n108 | 12:8 | 464n28 |
| 51:47/23 | 157 | 12:15 (mss A B) | 489n116 |
| | | | |
| <i>Testament of Abraham</i> | | <i>Wisdom</i> | 342n161 |
| 4:5 | 596n73 | 11–15 | 353 |
| 12:10 | 596n73 | 15:1f | 355 |
| | | | |
| <i>Testaments of the Twelve Patriarchs</i> | | Qumran | |
| | 156, 157, 161, 175, 211,
327, 415, 421, 421n43,
422, 422n48, 422n51,
422n52, 440 | <i>Community Rule</i> | |
| | | 1QS | 3n5, 189n9,
417–420, 417n27,
418n29, 424, 435,
436, 436n115,
438, 438n128,
448, 485,
644n105, 645,
647, 653 |
| TAsher | | 1QS 1:1–11 | 417 |
| 1:3–9 | 421 | 1QS 1:4 | 417n28 |
| 3:1 | 343n169 | 1QS 1:18 | 420n39 |
| 6:4–5 | 421n47 | 1QS 1:20 | 426n63 |
| TBenjamin 8:3 | 435 | 1QS 1:23–24 | 420n39 |
| TDan | | 1QS 2:10 | 426n63 |
| 5:5 | 422n53 | 1QS 2:18 | 426n63 |
| 5:10 | 422 | 1QS 2:19 | 420n39 |
| 6:10 | 343n169 | 1QS 2:25–3:11 | 229n42 |
| TGad | | 1QS 3–4 | 417n27 |
| 5:2 | 343n169 | 1QS 3:2 | 336n126 |
| 7:5 | 355 | 1QS 3:5 | 336n126, 420n39 |
| TIssaschar | 421n46 | 1QS 3:7f | 229n45 |
| TJoseph | | 1QS 3:13–4:26 | 419, 422–424,
653n157 |
| 12:2f | 157 | 1QS 3:20–25 | 419 |
| 13:1 | 157 | | |
| 13:3 | 157 | | |
| TJudah 18:2 | 334n112 | | |
| TLevi | | | |
| 2:3 | 128n109 | | |
| 3:2 | 355 | | |
| 15:2 | 355 | | |
| 19:1 | 422, 441 | | |
| TRuben | 334, 435 | | |

1QS 3:21	454	CD 4:21	389n31
1QS 4:4	355	CD 4:22	158
1QS 4:7	326n61	CD 5:2f	85
1QS 4:20–22	229n42	CD 5:7f	69
1QS 5:7–13	417n26	CD 5:17	420n40
1QS 5:20	336n126	CD 6:2–7	595
1QS 5:213f	229n42	CD 6:10	420n40
1QS 6:8–7:27	644n105	CD 6:13–19	420
1QS 6:13–23	158, 436n115	CD 6:14	420n40
1QS 6:16–23	647n121	CD 6:15	425
1QS 6:24–7:27	436n117	CD 7:6	436n117, 437n122
1QS 8:5–6	485n94	CD 7:8	589n44
1QS 8:5	487n102	CD 7:10	158n58
1QS 8:8–9	485n94	CD 7:14	589n44
1QS 8:13–15	419	CD 7:16	589n44
1QS 8:13	189n9	CD 8:2	420n40
1QS 8:14	227n29	CD 8:9	158
1QS 8:17ff	227n29	CD 8:10–12	438n125
1QS 8:17f	229n42, 230n49	CD 9–14	3n5
1QS 8:20–9:2	230n4, 644n105	CD 10:11	127
1QS 9:3–6	135	CD 11:17	46n27
1QS 9:6	158, 485n94	CD 11:20	589n44
1 QS 9:8	485n94	CD 11:21	128
1QS 9:19	227n29	CD 12:1–2	438n125
1QS 11:8	448n160	CD 12:6–11	284n19
1QS 11:21	438	CD 12:8	189n9, 200
		CD 12:8f	418n34
<i>Damascus Document/Covenant</i>		CD 13:15–18	84n64
	3, 3n5, 3n6, 46,	CD 13:17	75, 84n64
	68, 70–73, 75,	CD 14:3–6	419n36
	84n62, 84n63,	CD 14:16–17	438n125
	94, 96, 97, 420,	CD 15–16	3n5
	428, 436–440,	CD 15:5	158
	437n120, 438n128	CD 15:15–17	448
CD, Text B (Geniza)	438n126	CD 16:1–4	182n159
CD 1:18	440n132	CD 16:1	158
CD 4–5	76	CD 16:2–3	454
CD 4:12–18	179n143	CD 16:3f	46n27
CD 4:13	420n40	CD 19:2	437n122
CD 4:15	420n40	CD 19:3	438n126
CD 4:19–5:5	389n30	CD 20:6	227n29
CD 4:19–5:1	84n64	4Q D mss	438n128
CD 4:19f	53n58	4Q266 fr 9 iii:1–5	84n64
CD 4:19	335n113	4Q267 9iii3	189n9
CD 4:20–5:1	84	4Q267 frg. 9 v:6–10	419n36
CD 4:20f	69, 84n64	4Q269 fr 9:4–7	439n129
CD 4:20	98n113	4Q270 frg 4	438n125
CD 4:21–5:5	438n125	4Q270 frg 7 i:13–15	438n127

- 4Q270 frg 7 i:14 447n154 4Q394 frg 3–7 1:11f 592n54
 4 Q271 fr 3:11–15 439n129 4Q397 frg 14–21 line 8 648n127
 4Q398 frg 14–17 1:7–8 420
Florilegium
 4Qflor/4Q174 211n100, 418, 419n36, 428, 442, 443, 448, 449, 449n164, 589n41 4Q398 fr 14–17 col II:2f 363n66
 4Q398 frg 14–17 col II:5 421
 4Q398 fr 14–17 col. II:7 363n66
- Hodayot*
 frg 1 col i.21.2, 1:3–6 419n35 1QH 226n25, 363
 frg 1 i,21, 2: 2–7 443 1QH 4:29–31 373n118
 frg 1 i 3–4 284n19 1QH 9:14f 373n118
 frg 1 i,21, 2:3–4 448 1QH 13:16f 373n118
 frg 1 i,21, 2:11 449n164 1QH 16:11 373n118
 1QH 23 355
 1QH 23[18]:14f 227n32
 1QH 30 355
 1QH^a 19:3 426n63
- Genesis Apocryphon*
 73
- Habakuk Peshar*
 1QpHab 357n37, 361
 1QpHab 7:10f 362
 1QpHab 8:1–3 158n58, 362
 1QpHab 11:4–9 505n21
 1QpHab 11:4–7 527n118
 1QpHab 11:6–8 47
 1QpHab 12:3–4 158n58
 1QpHab 12:4f 362n60
 4QpHab 418n31, 456n191
- Halakhic Letter*
 4QMMT, 4Q394–399 24n10, 28, 39, 40, 46, 46n26, 49n38, 121, 121n71, 352n27, 357n37, 363, 416n21, 418, 420, 427n70, 427n71, 613, 613n57, 648
 4QMMT C 25–31 363n66
 4QMMT 13 329n78
 4QMMT 21 329n78
 4QMMT 24 329n78
 4QMMT 36 329n78
 4QMMT 44 329n78
 4QMMT 60 329n78
 4QMMT 63 329n78
 4QMMT 72 329n78
 4Q394 1–2 (i–v) 46n26
 4Q394 frg 3–7 1:5–12 418n34
- Isaiah Peshar*
 4Q164 451n175
- Nahum Peshar*
 4QpNah/4Q169 439, 440, 456n191
 4QpNah 2:2 589n41
 4QpNah 2:8 589n41
 4QpNah 3:4–5 158n58
 4Q169 frg 3–4 i:2–3 418n31
 4Q169 frg 3–4 ii:2 439n130
 4Q169 frg 3–4 iii:2 439n130
 4Q169 frg 3–4 iii:6 439n130
- Psalms Peshar*, 4Q171/4QpPs^a (4QpPs37)
 2:4 473n54
 2:10 473n54
 2:15 362n60
 2:33 362n60
 3:1 436n117
 3:5 473n54
 3:10 473n54
- Malachi Scroll* 74
- Melchizedek Scroll*
 11Q13/11QMelch 228
 11QMelch 2:15f 228n36
 11QMelch 2:16 224n13
 11QMelch 2:18f 224n13
 11QMelch 2:18 228n36

<i>Messianic Apocalypse</i>		4Q416 fr. 2 ii 21	332n100
4Q521	228, 228n37, 232	4Q416 fr. 2 iv 5	332n100
4Q521 frg 2 2:1–12	228n37	4Q448	201n65
		4Q470 fr 5:17–21	439n129
<i>Minor Prophets Scroll</i>		4Q502 frg 14:6	438n127
4Q76–81	74, 75, 79n37, 81, 87	4Q502 frg 19:2–3	438n127
		4Q511 frg 2 i:6	485n93
		4Q513	46n26, 49n38
<i>Rule of the Congregation</i>		4Q550c 2–3 (Proto- Esther)	189n8
1QS28a/1QSa	438n128	4Q550d ar 1 iv3	189n8
1:1	158		
1:1–5	438		
2:4–9	449n161	<i>War Scroll</i> , 1QM	227, 417, 417n27, 418, 420, 418n29, 419n37, 422, 440, 485, 488, 489
2:9	448n160		
<i>Songs of the Sabbath Sacrifice</i>		1QM 1	417n27
	448n160	1QM 1:1–7	418
		1QM 1:1	158
<i>Temple Scroll</i>		1QM 1:4–7	418n33
11QTemp	24n10, 46n26, 72, 93n98, 128, 591n50, 592n52	1QM 2:7	488n114
		1QM 4:10	449n161, 488n114
11QTemp 45:7–11	128n110	1QM 6:6	485n93
11QTemp 54:4	84n64	1QM 7:6	489n117
11QTemp 56:18	84	1QM 12:7	489n117
11QTemp 57:17–19	53n58, 84, 84n64, 389n30, 438n125	1QM 14:7	227n34
		1QM 15:2	418n33
11QTemp 64:1ff	84n64	1QM 16:1	418n33, 485n93
		1QM 17:6f	418n30
<i>Various Manuscripts</i>			
4Q177 (Catena)	442n136		
4Q184 (Wicked Woman)	438	Philo	
4Q196 fr. 2:6–7 (Tobit)	5n19	<i>de Abrahamo</i> (Abr)	
4Q213a (Aramaic Levi)	128	8	159n63
4Q213a fr 1 col 1:6–13	128n109	<i>de Confusione linguarum</i> (Conf)	
4Q242 (Prayer of Nabonidus)		129	159n62, 203n71
frg 1:4	189n8	<i>de Congressu</i> (Congr)	
4Q319 (Otot) 3:3	189n9	40–44	159n62
4Q326 (Calendrical Doc)	46n26	79f	333n108
		87	327n71
4Q327 (Calendrical Doc)	46n26	<i>de Decalogo</i> (Dec)	
4Q333 (Historical text E)	189n8	1	113n32
frg 2		32	433n102
		45	114n41, 136n151

158	136n151	<i>de Mutatione</i> (Mut)	
159	159n61		265f 327n71
<i>de Ebrietate</i> (Ebr)			
113	595n70	<i>de Posteritate</i> (Post)	
<i>in Flaccum</i> (Flacc)			
	158, 202n69	54	202n69
120–123	114n42	63	202n69
		92	202n69
<i>de Fuga</i> (Fug)			
140	80n5	<i>Quaestiones in Exodum</i> (QE)	
<i>Hypothetica</i> (Hyp)			
	44, 57, 57n74, 58, 60–64, 62n103, 63n105, 64n111, 65n117, 112n25, 340n151	2.2	211n102
8.7.2	61n97	<i>Quis heres</i> (Her)	
8.7.6	60n94	279	159n60
8.7.8	59, 60n94	<i>Quod omnis</i>	
8.7.9	58n83	75	147n19, 340n152
11.1	437n119	83	340n152
11.14	434n109, 436n116	86f	340n152
<i>de Josepho</i> (Jos)			
218	340n150	<i>de Somniis</i> (Somn)	
<i>de Legatione ad Gaium</i> (Leg)			
	158, 202n69	2:271	595n70
4	159n63	<i>de Specialibus legibus</i> (Spec leg)	
4:2	202n69		61, 62, 62n103
87	340n150	1:1	113n32
92	340n150	1:51	211n102
99	224n7	1:162	113n31
184	451n174	1:258	136n151
207ff	163n80	1:261	113n31
278	159n65	2:41	159n61
373	146n15	2:86	159n61
<i>Legum allegoriae</i> (Leg all)			
3:244	333n108	2:145	159n61
<i>de Migratione Abrahami</i> (Migr)			
		2:162	50n40
18	280n5	2:176	50n40
20	149n25	2:242–248	61n97
70–73	470n48	3:30–31	82, 434n104
86–94	321n26	3:30	53n57
		3:34–36	434n110
		3:36	60n89
		3:63	111n24
		3:82	82n55
		3:83–209	112
		3:88–91	113n32
		3:120–126	113n32
		3:171–174	434n105
		3:205	113n31
		4:203–307	413n9

<i>de Virtute</i> (Virt)	341	1:4	202
65	341n154	1:6–218	63
66	341n153	1:51	555n106
69	341n153	1:53	534, 563n17
72	341n153	1:167	160n69
81	341n156	1:172–175	191n20
82–94	341n157	1:179	210n97
82	336n123	1:212	43n15
88	341n154	1:219–2:144	63
102	341n155	1:223	63n107
108	146n16	1:251	63n107
109	341n155	1:320–2:1f	63n107
121	341n155	2:27	57n78
125	341n155	2:77	592n53
131	341n155	2:145–286	63
		2:145–219	63
<i>de Vita contemplativa</i> (Vit cont)		2:146	340n147
1	434n106	2:175	57n78
1f	65n114	2:190–218	64n112
21	65n114	2:190–217	43
22	434n107	2:198	112n25
34	434n108	2:199	59
57–63	321n29	2:201	57
		2:202	60
<i>de Vita Mosis</i> (Mos)		2:203	112n25
1:7	159n60	2:206	61
1:34	159n59	2:207–208	59
2:31–32	159n64	2:213	57, 58, 340n148
2:138	136n151	2:213f	64
2:193	159n59	2:215	56, 61
		2:216	62, 64
		2:220–286	63
Josephus		2:230	340n148
		2:271	58n82, 64
<i>Against Apion</i>	41, 41n1, 41n3, 42, 42n6, 42n9, 43n15, 44, 54n61, 54n63, 56–58, 57n74, 57n77, 57n79, 59n86, 59n88, 60, 60n92, 61n95, 61n99, 62–65, 62n101, 62n103, 63n105, 63n106, 64n111, 65n117, 65n118, 112, 202, 205, 208, 208n86, 215, 217, 340, 534n4, 538, 540, 540n34, 583n16, 605	2:296	160n66a
		<i>Life</i>	56, 65, 202, 205, 534n4, 535, 535n7, 536, 536n14, 538–541, 542n42, 544, 545, 554, 555, 555n106, 605
		1–12	202
		1–6	48, 479n74
		6	536n14
		9–12	583n14
		10–12	42n6
		10	302n17, 646n116
1:1	160, 160n66a	11	229n40, 436n114

12	605n13, 606n21	1:4	160, 160n67
16	147n19	1:5	41n1, 604n8
27	208n89	1:6	41n1, 160n67
113	576	1:8	160n66a
159–161	52	1:10	41n1
161	52	1:24	340n147
189–198	606n21	1:95	160n67
190–216	614n61	1:146	160n67, 160n68a,
190	365n80, 583n12		203n73
191f	536	1:203	208n89
191	302n17, 586n31,	1:214	160n67
	606n21	1:240	160n67
197	302n17	1:257f	139n161
309	365n80, 583n12	1:333	203n72
336–367	536n14, 541	2:161	339n143
342	564n23	2:317	44
343	544n51	2:318	47n31
355	544n51	3:223	43n14
358	564n23	3:224–286	43, 540
359	536n13, 536n14, 541,	3:224	43n12
	544n54	3:237	50
360	541	3:239	47
362	555n106	3:245	50
365f	545	3:248	47
422–429	605n14	3:249	44
426	54, 83n59, 606n20	3:250–252	48
428f	272n53	3:252	49n37
430	160n66a, 479n74, 535,	3:261	91n88
	541	3:276	44, 44n19
		4:11	160n67
<i>Jewish Antiquities</i>		4:26	340n145
	41, 41n2, 41n3, 43,	4:67–75	41n2
	43n10, 43n15, 45,	4:78	47n31
	47, 54n63, 56, 57, 59,	4:84	47n31
	61n99, 62, 62n101,	4:180	203n72
	62n103, 64, 65, 148,	4:196–198	43n13
	193, 202, 203, 205, 207,	4:198	41n1, 43n14
	208, 216, 340, 382n151,	4:199–301	43, 58, 540
	533, 535–538, 535n7,	4:206	44n18
	541, 542n42, 545, 554,	4:207	382n151
	555n106, 559, 562–564,	4:238	646n114
	566, 571–573, 575, 578,	4:244f	59
	582, 583n16, 605, 606	4:245	44, 44n19
1–11	194	4:251f	61
1–10	203	4:253	53, 83, 606n20
1–9	160	4:260–264	61
1:1–4	43n11	4:261	59
1:1	479n74	4:271	58n80, 62n102

4:274	58n80	13:405f	537
4:275	58n80	14:8	146n13
4:278	60	14:9	146n13
4:284–287	58n80	14:22	650n138
4:301	58n80	14:41	577n71
6:26	160n67	14:63f	52
6:30	160n67	14:110	180n151
6:40	160n67	14:187	192n23
6:68	160n67	14:190–267	628n33
6:96–98	160n67	14:255	149n28, 160n69
6:324	160n67	14:258	108n5
7:72	160n67	15	206n248
7:103	160n67	15:259	165n89, 167n97
8:25	160n67	15:409	146n13
8:163	160n67	16:198	83n59
9:245	160n67	17:149–164	381n150
10:8	147n18	17:190	254n3
11	160, 203, 203n73	17:323	254n3
11:6	203	18:1–3	565
11:77	50n43	18:3	574n58
11:123	146n15, 154n47	18:4–25	565
11:146	202n238	18:4–23	573n55
11:168	203n74	18:4–10	216n118, 572n44, 606n18
11:169–173	145	18:9	378n138, 565
11:169	203, 213, 217	18:11	302n17
11:173	203	18:12–17	24n9, 527n119, 613n56
11:312	203	18:12f	606n18
11:321–339	163n79	18:15	51n48, 505n21, 586n31
12:8	202n70	18:16	653n159
12:106	109n9	18:17	51n48
12:189	340n145	18:18–22	65n115
12:241	579n78	18:23–25	216n118, 572n44
12:271	576	18:23	53n56, 606n18
12:277	51n52	18:25	565
12:278	576	18:26–29	565
12:293	646n116	18:26	574n58
13:1	146n15	18:117–119	574n60
13:62–72	114n40	18:117	229n42
13:171	42n5, 302n17	18:228	160n69
13:254–256	163n79	18:229	224n5
13:257f	576n67	18:257–259	63n109
13:258	146n13	18:259	202
13:288	24n9, 302n17	18:261–309	163n80
13:293	302n17	18:261	451n174
13:297	24n9	20:9–16	545n61
13:298	65n115	20:38–48	576
13:319	576n67	20:51–53	570
13:372	50n45, 613n58		

20:92–96	576n68		578, 605
20:97–215	103n133, 377n128	1	561, 562
20:97–99	572n49	1:1f	202, 561n12
20:97f	376n127, 615n65	1:3	160n68
20:101–103	572n45	1:6	160n66a
20:101	478n69	1:17	561
20:102	216n118, 564n23, 565, 615n65	1:18 1:19f	561 562
20:103–136	216n118	1:30	561n12
20:103	545n62, 552n91	1:31–2:654	562
20:131	552n91	1:32	50n43
20:142	543n44	1:146	52
20:145	543n45	1:175	339n144
20:154	626n21	1:485	339n144
20:160–166	573n52	1:648–655	381n150
20:160	560n5	2	561, 562
20:165	573n52	2:20:3	377n132
20:167–172	573n54	2:117	563, 564
20:179–188	545n63	2:118	563, 565n30, 573n55, 606n18
20:179	545n62		606n18
20:186	573n53	2:119–166	653
20:196	545n62	2:119–161	65n115
20:197–203	546n65, 656n171	2:119ff	606n18
20:197	545n62	2:119	42n5, 302n17, 340n149
20:199	302n17	2:120–122	436
20:200	42n8, 364n70, 555	2:122	340n149, 420n41, 480
20:201	555n105	2:124	437n119
20:203	545n62	2:128f	128n111
20:205–207	552n91	2:137–138	436n115
20:206f	546n65	2:139–142	417n26
20:211	544n56	2:139	417n28
20:213	545n62	2:141	59
20:214	560n5	2:142	408n60
20:223	545n62	2:143–144	436n115
20:262	604n8	2:160–161	436
20:266	535, 541	2:160	60n91
20:266f	536n14	2:162–166	24n9
20:268	605n14	2:162	586n31
22:1–16	289n43	2:163	587n33
22:97–258	289n43	2:164f	653n159
		2:166	340n149
<i>Jewish War</i>	43n15, 54n63, 60, 65, 160, 161 (proem), 202, 205, 207–210, 216, 378n134, 379n139, 534–537, 535n7, 542n42, 545, 554, 559– 566, 560n5, 571–573,	2:184–187 2:192–203 2:197 2:204–408 2:204–308 2:220 2:223–407	163n80 163n80 592n53 483 289n43 572, 572n43 103n133, 377n128

3:14f	230	7-15	267
3:15	294n77	7:1f	360
4:17	230	7:6	233n59, 522n101
4:23	225n19	7:13-14	424
5-7	104n135, 226, 267, 515	7:21-23	363n65
5	99	7:24-27	363n65
5:16	249	7:27	285
5:17-19	105n139, 279, 298n5	8	294n74
5:18	292	8:5-15	531
5:20	279, 515	8:5-13	282, 294
5:21-48	25, 99	8:10-12	105n140
5:27-30	99n117	8:10	177n137
5:28-30	433	8:11f	521n96
5:31-32	97n111, 520	9:14	244n38
5:31f	98, 99, 101	9:22	374n123, 424n56
5:32	68, 73, 76, 292, 389n25	9:33	177n137
5:45	425	9:35	225n19
5:47	105n139, 267n28, 282, 292n62, 516n74, 645n113	9:39	345n180
6	522, 523n105, 526	10:5-8	283n15
6:1-18	262-263, 267, 293, 516, 520, 523, 523n106	10:5f	279, 283
6:2-4	464n28	10:5	281, 282
6:2	292n62, 293n68, 515, 516n76	10:6	105n139, 177, 279n1, 280n4, 282, 287, 521, 521n97
6:5f	269	10:7	230
6:5	265, 292n62, 293n68, 515, 516n76	10:8-15	233n59
6:6	273n57	10:10	404n49, 522n101
6:7-15	267	10:16	294n77
6:7-8	267	10:18	294
6:7f	516	10:23	177
6:7	105n139, 267, 267n28, 292, 516n74, 645n113	10:24	640n89
6:9-13	523n106	11:2-6	231
6:9-12	516	11:5	233n**
6:9ff	233n59	11:7-13	231
6:9	516	11:12	575n64
6:12-15	265	11:14	231, 490n121
6:14-15	267n27	11:25	264n5
6:15	293n68	12	176
6:16-18	245n43	12:1-14	518, 520
6:16	292n62, 515, 516n76	12:8	305n28
6:19f	355	12:11f	302
6:24	425, 455n189	12:12	294
6:25-34	270n46	12:14	302n15, 519n87, 549n80, 551n89, 608n31
6:32	105n139	12:24	179n143
		12:31	522n101
		13:14f	639n85

13:52	243, 243n35, 292	21:43	279, 281, 283, 294, 521
13:53–58	226	21:45	178n142, 519n88
13:57	280	21:46	294
14:12	230	22:11–13	254n7
14:23	265n18, 524n113	22:15–22	574n58
15:1–20	17n39, 519, 520	22:15	515n70, 519n87, 519n88
15:1	515n70	22:18	293n68, 515n70
15:3–6	270n46, 517n77	22:34	519n88
15:7	293n68, 515n70	22:40	366
15:11	635n63	23	176, 267, 515, 517, 519n88, 526, 610n41
15:12–14	519	23:1–12	517, 520
15:17	635n63	23:1	293n68
15:20	134n141, 519	23:3	517
15:21	285n25	23:4	517n78
15:24	105n139, 177, 279, 280, 282, 287, 288, 288n42	23:7–12	291n57, 293
16:9f	355	23:7–10	267, 268
16:17	409n64	23:8	291, 293, 582n8, 660
16:19	298n5	23:9	518n80
16:27	359, 489	23:10	521
17:4	268, 518n84	23:13–33	517, 520, 526
17:13	231	23:13–32	293
18	645	23:13	267n24, 293n68, 515n69
18:15–18	645	23:14	515n69
18:15–17	645	23:15	267n24, 293n68, 515n69
18:16	645n112	23:16–22	517
18:17	105n139, 267n28, 292n62, 516n74, 645, 655	23:23	105n139, 267n24, 292, 293n68, 515n69, 517
18:19	298n5, 335n117	23:25–26	517
18:23–35	254	23:25	267n24, 293n68, 515n69
19	98, 99	23:27	267n24, 293n68, 515n69
19:1–9	389n25	23:29–31	517n78
19:1–8	387n17	23:29	267n24, 293n68, 515n69
19:3–9	97n111, 98, 519, 520, 594n62	24:14	225n19, 294
19:3	53n57, 90	24:31	596n73
19:7	388n23	24:42	255n10
19:9	68, 73, 99, 292, 387n17, 389n25	24:50	254n7
19:28	177	25:1–13	246, 255
20:19	288	26:6–13	247n52, 432n95
21:13	269n37	26:11	248n53
21:22–46	282	26:25	268, 518, 518n85
21:31	425n60	26:39	264n5
21:33–22:14	282		
21:43–45	105n140		

26:49	268, 518n85	1:23f	131
26:52	575n64	1:29–31	432n93
27	176	1:35	231n54, 265n18, 524n113
27:1	519n87		231n54
27:3	518	1:45	244n38, 245
27:7	519n87	2	298n5, 307, 635n67
27:19–25	531	2:9	308n38
27:19	295	2:12	425n60
27:24	295	2:15	515n71
27:42	176	2:16	244, 523n109
27:62–66	105n140, 294	2:18–22	230
27:62	178n142, 294, 519n88	2:18	518
27:65–66	531	2:23–3:6	305, 497n146
27:65f	296n86	2:27	176
28:1–8	432n98	3	302n15, 514n63, 519n87, 549n80, 608n31
28:11	296n86, 531	3:6	231
28:12	296n86, 519n87		432n96
28:15	105n140, 176, 178, 294, 521	3:19–22	243
28:18ff	283n15	3:34f	407
28:19	279–283, 279n1, 281n7, 283n15, 285n26, 294, 507n27, 521, 521n97	4	639n85
		4:11	260n25
		4:12	285
<i>Mark</i>	68, 72, 76, 91n89, 95–99, 98n115, 104, 105, 105n138, 131, 176, 225, 226, 229, 230, 230n52, 232, 233, 242, 244, 245, 247, 248n53, 249, 250, 267, 268, 285, 285n26, 287, 291, 293, 308, 308n40, 313, 407, 407n59, 514, 515, 518–520, 525, 526, 531, 607n22, 610, 635, 635n67	4:26–29	432n93
		5:1–20	374n123, 424n56
		5:19	226
		5:23–43	131
		5:34	131
		6:1–6	490n120
		6:7	265n18
		6:30	176
		6:34–44	17n39, 96n107, 519
		6:46	133n134
		7	386n16
		7:1–23	285n25
		7:1–15	176, 178
		7:2f	126n94
		7:3f	125, 400
1:1	225n18, 232, 407n59	7:3	267n24
1:4–11	230	7:5–15	183n163
1:4f	132	7:5	270n46, 608n34
1:4	131n124, 229n41	7:6	133n134
1:8	229n45, 229n46	7:7	635n63
1:11	407	7:9–13	131n124, 133n134
1:12f	231n54	7:12–14	183n163, 519
1:14f	131n124, 230, 232	7:15–19	
1:14	225n18	7:15	
1:15	250	7:19	
1:21–45	225		

7:20–23	131n124	14:1	248n53, 308, 635n67
7:24–30	285	14:3–9	247n52, 248, 432n95
7:25–30	432n94	14:3	248n53, 308, 635n67
7:27	482	14:5	308n39
8:1–9	490n120	14:6	248n53
8:31–33	407	14:7	248n53
8:38	359n48, 489	14:8	248n53, 249n60
9:2–8	486n99	14:9	249n60
9:2–7	407	14:36	264n5
9:4	490	14:45	268n30, 518n82
9:5	268, 268n30, 268n31, 518n82–84	14:62	407
9:13	490n121	15	176
10:1–12	96n107	15:1	519n87
10:1–10	387n17	15:26	574n60
10:2–12	53n58, 389n25, 594n62	15:32	176
10:2–10	96	15:48	574n60
10:2–9	76	16	409
10:4	388n23	16:1–8	432n98
10:5	105	16:6	407
10:6	389n31	<i>Luke</i>	68, 72, 95–99, 95n104, 95n106, 98n115, 105, 116, 131, 176, 177n138, 214n111, 225–227, 227n27, 229, 231, 232, 242, 248n53, 257n19, 261–266, 262n3, 263n4, 264n6, 264n8, 268, 272n52, 286n28–30, 286n32, 290n53, 291–294, 292n58, 308n39, 310, 310n47, 313, 324n44, 424, 432, 432n95, 432n99, 514, 515n71, 517n78, 518n83, 519, 520, 525, 533n2, 533n3, 542, 542n41, 546–553 , 564n22, 566n33, 570n40, 584n18, 584n20, 603–619 , 619n80, 659, 659n185, 659n186
10:11f	76, 80n46, 387n17	1–2	313, 553n98
10:12	285n25, 386n16, 403, 594n61	1:1–4	43n11, 313, 479n74
10:17f	518n80	1:1	335n117, 584, 604
10:17	229n47	1:3f	547
10:33	288		
10:45	407		
10:51	268n30, 518n82		
10:52	374n123, 424n56		
11:11–18	288n41		
11:17	269n37		
11:21	268n30, 518n82		
11:22–24	273n57		
11:25	264n7, 265, 267n27, 268, 274		
12:1–12	282		
12:13–17	574n58		
12:25	490n124		
12:35–37	288n40		
12:36	408		
12:41–44	610n41		
13:3–36	242		
13:21–23	260n25		
13:21f	574n60		
13:28–29	242		
13:28	259		
13:35	255n10		

1:3	551n88, 553n96, 584n18	6:2	659n186
1:4	605n11	6:5	305n28
1:19	225n16	6:7	515n71
1:38	432	6:11	549n80, 551, 608n31
1:54f	588n37	6:12	231n54, 265n18, 271n48, 524n113
1:55	587	6:15	575n62
1:59	116n53	6:20–49	226
2:1f	553n95	6:20–26	424
2:1	574n58	6:34	336
2:2	564	6:40	640n89
2:10	225n16	6:42	267n24
2:19	432	6:47–49	363n65
2:21–28	607n27	7	175, 553n96, 618n78
2:21	116n53	7:1–10	169, 176, 176n135, 282, 286, 531
2:25	177	7:3–5	286
2:26	286n30	7:4	287n33
2:32	549, 552n90	7:6	286, 549
2:34	177n137	7:7	287n33
2:36f	594n64	7:11–17	432n93, 490n120
2:51	432	7:18–23	226, 231
3:1	553n95, 553n99, 553n100	7:22	233n**
3:2	546n65	7:24–28	231
3:3	229n41	7:30	608n29
3:4	553n99	7:36–50	247n52, 432
3:7–9	229n46	7:36	549, 608n31
3:10–14	132, 229	7:38	247n52
3:12	230n48	7:39	425n60
3:13f	230n51	7:42	247n52
3:14	575n64	7:44	125n92
3:16	229n46	7:45	247n52
3:18	225n16, 230	7:47	247n52
4:16–30	226	7:50	424n56
4:19	227	8	243
4:21	226	8:1	225n17
4:25	177n137	8:2–3	432
4:27	177n137	8:10	639n85
4:42	231n54	8:21f	432n96
4:43	225n17	8:24	268n31, 518n83
5:5	268n31, 518n83	8:48	374n123, 424n56
5:16	231n54, 265n18, 524n113	9:2	230
5:21	515n71	9:3–6	233n59
5:30–32	425	9:10	131n121
5:30	425n60	9:12	265n18
5:33	244n38	9:18	231n54, 524n113
6:1–11	518	9:26	359n48
		9:28f	231n54

9:28	265n18, 524n113	16:18	53n58, 68n3, 76, 95, 387n17, 594n62
9:33	268n31, 518n83		
9:49	268n31, 518n83	17:13	268n31, 518n83
10:4–12	233n59	17:19	374n123, 424n56
10:7	404n49, 522n101	18:1	273n57
10:9	230	18:10–14	374
10:18	131, 131n121, 424	18:12	527n117
10:21	264n5	18:32	288
10:39	433	18:42	374n123, 424n56
10:42	432	19:2–10	425n60
11	517, 603n4	19:8	230n51
11:1–5	262–263	19:9	432n94
11:1	524, 528	19:12–27	553n98
11:2–5	507	19:47f	610n39
11:2–4	507n29	20:1	610n39
11:20	131n121	20:9–18	282
11:27f	432	20:19	294, 610n39
11:37	549, 608n31	20:20–26	574n58
11:40–48	517	20:41–44	288n40
11:46	517n78, 518	20:45–21:4	610n41
11:47f	517n78	20:47	515n69
11:53f	608n30	21:22–32	270n46
11:53	515n71	21:29	242
12	257	22:2	610n39
12:1–5	271	22:4	610n39
12:1–4	292	22:19f	95n106
12:35–38	256, 257	22:30	177
12:35–36	247	22:31	424
12:56	267n24	22:66	574n58
13:11–17	432	23	176
13:15f	302–303	23:2	574n58
13:15	267n24	23:6–12	553n100
13:17	432n94, 549n80	23:7	294n77
13:31–33	608n31	23:27–31	610
13:31	549, 553n100, 608n31	23:29f	518
13:33	288	23:51	177, 610
14:1	549, 608n31	23:52	610n39
14:5	303	23:66	610n39
14:6	549n80	24	408, 409
15:2	608n30	24:1–12	432n98
15:6	287n36	24:21	177
16:1–9	425	24:26f	552n90
16:3	425	24:27	546, 607n27
16:9	455n189	24:44	552n90, 607n27
16:13	455n189	24:53	553n98
16:14	608n29		
16:16	225n17, 231, 575n64	<i>John</i>	45, 51n50, 104n37, 142n5, 143n7,

	169n109b, 177–180,	3:2	268n30, 518n82
	179n146, 179n148,	3:10	178
	180n150, 181n157, 184,	3:22–24	230, 231n54
	185n165, 187, 189,	3:22	131n124, 132
	194n31, 207, 209, 212,	3:26	268n30, 518n82
	215, 218–220, 218n126,	3:28–30	244
	218n127, 225, 244n39,	3:29	244
	245, 247, 248n53, 268,	4	177, 635n65
	272n52, 276n65, 277,	4:1–42	432
	290n55, 297–314 ,	4:1f	131n124, 132, 230
	416, 432, 432n95,	4:9	178, 178n140, 180n149
	426n63, 466n34, 490,	4:14	496n144
	518, 523n110, 532,	4:21	432n99
	532n140, 532n141, 548,	4:22	178, 184, 313
	549, 549n78, 585n25,	4:31	268n30, 518n82
	607n22, 608, 608n33,	4:54	639
	618, 621–660	5	51n50, 298–300, 307,
	244n39		308, 311, 635n65
1	635n65	5:1	178n140
1:1–18	311	5:8–18	179n144
1:1–11	231n55	5:8	298, 307, 635n67
1:8	301	5:9	298, 307, 308n38, 637
1:9–11	636n70	5:9b–13	308n41
1:15	301, 311, 638n78	5:13	300
1:17	249	5:16–18	298
1:18	231n55	5:16	298n5, 549n80
1:20	490n119	5:17	300, 311, 637
1:21	636n70	5:18	218n125, 298n4, 298n5,
1:30	178		301, 608n31
1:31	230	5:20	637
1:32	302	5:28f	356n36
1:35–51	230	5:33–36	231n55
1:35–41	230	5:36	231
1:37	268n30, 518n82	6	635n65
1:38	230	6:4	178n140, 180n149
1:40	302	6:25	268n30, 518n82
1:45	180n149	6:41	180n149
1:46	178	6:52	180n149
1:48	268n30, 518n82	7	298–300, 305, 307, 310,
1:49	178		311
1:50	225	7:1	180n149, 218, 299
2:1–25	432, 432n99	7:2	178n140, 180n149
2:4	178n140, 180n149	7:7	311
2:6	639	7:10	180n149
2:11	178n140	7:11f	298n5
2:13	298n4	7:13	218n125, 311, 637
2:19	245	7:19–23	299
3	178n140, 583n11	7:19f	218n125, 299
3:1			

7:19	301, 309, 311	11	432
7:21–23	298n1	11:1–12:8	432
7:22–24	51n50	11:2	636n70
7:22f	51n50, 297, 297n*, 302, 303, 307, 309, 637, 637n73	11:7f 11:7 11:8	218 639n83 268n30, 300n12, 518n82, 639n83
7:22	304, 311		639
7:23	270n46, 298n4, 298n5, 301, 309, 310	11:13–15 11:41	264n5
7:25	217n290	11:47	178n142, 300n12, 639
7:38	496n144	11:53	218n125, 300n12
7:41	180n149	11:55	178n140
8	179, 299, 300	11:57	639
8:2–11	88n76	12	249
8:17	179, 301	12:1–8	432n95
8:31	179, 300n10, 313	12:1	248n53, 308, 635n67
8:32	622	12:3–8	248
8:37	218n125, 299n8	12:3	241n30, 248n53, 249, 308, 635n67, 636n70
8:40	218n125, 299n8		308n39
8:44	179, 184, 300n10, 313	12:5	248n53, 249n60
8:53	300	12:7	248n53
8:58	300n10	12:8	218n125
9	51n50, 298, 300, 301, 623, 624	12:10 12:13	178
9:1	300	12:21	180n149
9:2	268n30, 518n82	12:37–43	638
9:4	300, 637	12:37–42	639n86
9:11f	298n5, 300	12:37–40	639n86
9:13–41	636	12:39	637
9:13	637	12:40	637
9:14–16	179n144	12:42	179n145, 276, 293, 532n140, 601n91, 619n79, 637, 642
9:14	300, 307, 637		125n92
9:18–23	640	13:5	640n89
9:18	637, 637n74	13:16	344n175
9:22f	636	13:29	387n18
9:22	179n145, 276, 293, 301, 311, 532n140, 601n91, 619n79, 623, 639, 640, 642, 643	13:34 14–17 14:31	640 635n65, 640 635n65, 640
9:28	638n78	15–17	640
9:35f	637	15:11	387n18
9:40f	640	15:12	311
10:31	300n12	15:18	640
10:34	179, 301	15:20–16:4	641n92
10:35	298n4, 298n5	15:21	179, 302
10:40f	231n54	15:25	640
10:41	231n55	16:1	311
11–12	638, 639	16:2f	

16:2	179n145, 218n125, 276, 532n140, 601n91, 619n79, 642		353, 376, 378, 400, 409, 440, 450, 463, 465, 475, 476, 476n65, 479n74,
16:4	640		479n75, 480, 481, 483,
16:33	640		487, 490, 495, 496, 509,
17:1	264n5		533n2, 533n3, 541n37,
17:15	311		542, 542n41, 542n43,
18:3	178n142, 293		543n45, 546–557 ,
18:5	256n14		570–573, 570n40,
18:12	178n142		571n42, 572n49, 575,
18:13	546n65		577, 583–586, 584n18,
18:14	178n142		584n20, 593, 593n57,
18:31	179, 218n125		603–619 , 641, 645, 646,
18:33	178		656, 659, 659n185
18:38	179	1–5	553n98, 609n35
18:39	178	1	409
19:3	178	1:1f	479n74
19:7	179, 302	1:1	551n88, 553n96
19:12	179	1:8–9	490n120
19:14	179	1:8	180
19:19	178	1:9–11	486n99
19:21	178	1:11	213
19:26	432n99	1:13	575n62
19:31	298n2	2	212
19:38	311, 637	2:5	213
19:40	178n140	2:5a	213
19:42	178n140	2:5b	213
20:1–13	432n99	2:9	213
20:1	298n2	2:10f	213
20:13	432n99	2:14	212–214, 217, 218
20:15	432n99	2:17	440n133
20:16	518n82	2:22	213, 214
20:19	298n2, 311, 637	2:22a	214
20:30f	635n65	2:23	214
20:30	639	2:29	214
21:19	635n65	2:29a	214
21:24f	635n65	2:34–36	288n40
		2:35	495
<i>Acts</i>	27, 95n106, 103, 104, 108, 113n38, 177, 180, 184, 212–214, 213n108, 214n109, 214n111, 217, 217n123, 218, 225, 266, 286, 286n28, 286n30, 287, 289–291, 290n53, 313, 319, 322–324, 323n41, 324n43, 324n44, 324n48, 338,	2:36 2:37 2:38f 2:38 2:41f 2:42–46 2:42–45 2:42 2:44 2:46	214, 288n39 214, 229n47 214 131n124 214 479 344n175 470n46 269 528n125

3:1	269, 528n125	9:29	322n34
3:12	213	9:32	487n106
3:13	286n30	9:36–43	450n168
3:26	286n30	9:36	400
4:1	609	9:41	487n106
4:5f	552, 609	10f	550
4:6	546n65	10–11	177n138, 482
4:21	609	10	180n151, 286, 378, 553n96
4:27	286n30	10:1–11:18	483
4:32–5:11	344n175	10:2	286
4:32–35	479	10:4	464n28
4:36	479, 509n35	10:9	524n113
5:1–6	480	10:22	146n15, 168n105, 286
5:16	131n122	10:28	482
5:17–40	656n171	10:31	464n28
5:17	302n17, 552, 609	10:36	168n105, 180n152
5:24	609	10:39	214
5:26	609	11	477, 550, 570
5:34–40	549	11:2f	477
5:34–39	549	11:25–14:28	483
5:34	47n29, 583n12, 586n31, 608n32, 612	11:26	286n30, 570n40, 638n81
5:35	213	11:27–30	477
5:36	376n127, 572n49	11:28	570
5:37	564	11:29	344n173, 478
5:38f	427n67, 554, 603, 612, 617	11:30	477, 478
5:38	555n105, 610n42, 617	12:24	546
6–8	609n35	12:25	344n173
6:1	150n29, 322n33	13–19	180n151
6:5f	610n43	13–17	618n78
6:7	546	13	180n151
6:9	319n15, 610n44	13:16	213, 214n110
6:12	610n44	13:23	214n110
7:5	588n37	13:24	229n41
7:11	612n53	13:27f	214
7:42	288n39	13:38	214n110
7:56	490	13:45–50	550
7:58	322n32, 575n62, 599, 610n45	15	26, 39, 40, 477, 482, 550, 570
7:60	610n45	15:1–16:5	483
8f	656n172	15:1–5	295
8	378	15:1	376, 466, 570, 619
8:7	131n122	15:5	104n135, 302n17, 477, 570, 575n62, 598, 608n32, 619, 646n116
9–11	213		
9:1f	575n62		
9:2	36, 40	15:6–29	478
9:13	487n106	15:13	103n130

15:20	98n112, 134n142, 334, 593n57, 593n59	20:4	464, 472, 478
15:21	133, 319, 335	20:5–15	542n41
15:29	98n112, 134n142, 334, 570, 593n57, 593n59	20:6	476, 478, 480
15:39f	286	20:7	344n175, 630n37
16–19	216–217, 323	20:8	256n14
16:1	324n49	20:22f	478
16:10–17	217, 542n41	21–23	579n77
16:11f	476, 478, 480	21	483, 550, 570
16:12	108n6, 322	21:1–18	542n41
16:13	324n43	21:8	225n23
16:14	450n168	21:15–22:3	611n47
16:19	324n45	21:16–26	477n66
16:20	324n44	21:18	103n130
16:22	324n44	21:20–30	376, 378
16:30	229n47	21:20f	475, 447
17–19	450	21:20	104n135, 570, 575n62
17:1–9	217	21:23–27	113
17:2	325	21:25	98n112, 479, 593n57, 593n59
17:4	325	21:26–28	553n98
17:5–7	375n126	21:26	479
17:5	324n45	21:27	474n57
17:6f	217	21:28	213, 474, 483, 570, 575n62
17:9f	324n46	21:34	547
17:13	324n45	21:38	211, 545n63, 564, 571, 573n54
17:14f	324n48	22–28	313
17:16	324n47	22:3	47n29, 549, 575n62, 584n19, 599
17:18	551n87	22:9	608n32
17:22	213	22:10	229n47
17:27	551n87	22:17–22	409n63
18:1–18	26	22:26–19	553n97
18:2	217n122, 450n166, 450n168, 627	22:30–23:9	612, 656n171
18:3	345	22:30	547
18:5	324n48	23:5	611
18:18	450n166	23:6–9	552
18:24–19:7	231n55	23:6	549, 584n19
18:25	553n99	23:8	587n33, 596, 653n159
18:26	450n166	23:9	546n65, 549, 555n105
19:3	230	23:12–14	575n62
19:4	229n41	23:27	553n97
19:20	546	24:1–27	572n43
19:24	631	24:1	552
19:32	448n159	24:5	180, 302n17, 555n104
19:35	213, 448n159, 515n71	24:14	553n99, 555n104
19:39f	448n159	24:17f	477n66, 479
20–21	478		

24:17	479		369n94, 370n101,
24:24	543n44		385n11
24:27	570	1–4	357n37
25:8	553n96	1–2	353
25:11	553n96	1	385n10
25:13–26:32	550, 572n43	1:1	225n22, 348
25:16	551n87	1:3f	294n77
25:20	551n87	1:5	370, 385
25:22	550n84	1:6	370
25:26	548	1:7	348, 473, 488
26:2	551	1:13	94n100, 370, 372, 385,
26:5	302n17, 549, 584n19,		473
	608n32	1:16–3:20	357, 357n38, 361, 373
26:8f	552n90	1:16–31	361
26:10	487n106	1:16f	357, 397
26:22–24	584n19	1:16	181, 181n154, 347,
26:22f	552n90		348n4, 372, 382, 473
26:22	553n100	1:17	357n37, 361, 444n144
26:23	549	1:18–32	357
26:26f	551	1:18	382
26:28	638n81	1:20	357
26:29	551n87	1:22–28	381
27:1–28:16	542n41	1:24–27	379n140
27:3	342n162	1:24	131
28	350n14, 475, 553n95	1:26f	335
28:2	342n162	2–3	368n91
28:11	343n172	2	347, 347n1, 353,
28:14–16	548		353n33, 360, 364,
28:17–25	553n97		364n71, 367, 368, 370,
28:17	608n28		380, 380n143
28:21	381, 475	2:1–3:20	357n38, 379
28:22	302n17, 555n104	2:1–16	357n38, 370, 372n110
28:23	608n28	2:1–11	361
28:25–28	550	2:1–9	357
28:25	612n53	2:1–3	354
28:26f	639n85	2:1ff	373
28:28	612n53	2:1	357, 359n54, 360
		2:4–11	354, 355
<i>Romans</i>	27, 99n118, 217,	2:4–9	357
	267n26, 289n47,	2:4	355
	326n58, 347–391, 393,	2:5	355
	395, 395n9, 397, 398,	2:6–16	370, 380, 380n143,
	413n7, 450n167, 457,		380n145
	465, 467, 468, 473n54,	2:6	354n35, 355, 358, 359,
	477n66, 482, 482n82,		369, 369n97, 469n45
	566, 569, 571, 589	2:7–10	356
1–8	354n35, 361n58,	2:7	355, 356, 369n97
		2:8	356

2:9–11	357, 361	4	379, 588n38
2:9f	181, 181n154, 357, 361, 368, 372, 374	4:2f	488n108
2:9	356	4:3	357n37
2:9b	357	4:6	363
2:10f	357, 382, 397	4:10–12	382n154, 391n36
2:10	356, 444n144, 473	4:13–18	587
2:11	356, 359	4:18	589n44
2:12–3:20	361	4:25	382
2:12	357, 361, 368	5	452
2:13f	374	5:11	397
2:13	347n1, 354n35, 361, 362n62, 363, 368, 368n91, 369, 369n96, 369n98, 469n45	6–7	387, 390, 390n32, 597
2:14f	361	6	383
2:14	368	6:12f	397
2:15	368n91, 592n56	6:17	400
2:16	225n20, 357n38	7–8	385n11
2:17	181n156, 357n38, 368, 373, 488n108	7	94, 95n106, 383, 390n32
2:21–25	381	7:1–4	94, 383, 386
2:21–23	379n140	7:1–3	383n1
2:23	488n108	7:1–2	403
2:25–29	380	7:1	385
2:28–3:1	181	7:1a	384, 385n12, 387
2:28ff	181n156	7:1b	384, 385n12
2:29	267n26	7:2–4	594
3:1–2	380	7:2f	95
3:1f	372, 446, 568n38	7:2–3	386, 387, 390
3:1	368, 449	7:2	364n68
3:2	369	7:3	94, 386, 388, 389
3:8	369, 372	7:4	384n2, 386, 390
3:9	369, 372, 382	7:6	327
3:10–18	369n94	7:7	364n68, 387
3:10	251	7:11	384n9
3:11–18	382	7:12	351, 364n68, 387
3:19f	369	7:13	384n9
3:19	373	7:14	364n68
3:20	357, 363, 369, 369n94, 373, 382	7:16	364n68
3:21f	379	7:21	364n68
3:23	372	7:22–23	385
3:26f	488n108	8	452
3:28	363, 368n91	8:2–9	131
3:29f	382n154	8:2	364n68, 385
3:29	181n155	8:16	264n5
3:31	298n5	8:36	496n145
		9–11	182, 183, 294, 350n14, 372, 372n113, 372n114, 379, 381n146, 381n150, 382, 382n153, 395n10, 397, 397n20

9:1–5	182, 369	15:16	225n22
9:2f	446	15:24	372
9:2	181	15:25–31	478
9:3	328n74, 373n116	15:25–27	473
9:4	181, 364n68	15:25f	459, 470n46, 480
9:20	332n98	15:25	469
9:24	181n155	15:26	344, 472, 476
10:8	589n45	15:27	469n43, 470, 473
10:12	181, 181n154, 444n144	15:30–32	381
10:15	224n13	15:30–31	569
11	452	15:30f	579n77
11:1	181, 182, 589n45	15:31	372, 376, 469, 474, 475n60
11:2	589n45	16	372n113
11:4	589n45	16:1	450
11:7	454	16:2	335n117
11:11f	374	16:3	373n116
11:11	589n45	16:4	132, 449n162, 450n166, 481
11:13	27, 94n100, 181, 182, 366, 370, 372, 385, 645	16:7	373n116, 450
11:17	372	16:11	373n116
11:20	183	16:15	488n109
11:22	490n119	16:16	449n162
11:25f	182	16:17	400
11:25	182n161, 454, 596n72	16:20	452n177
11:26	374	16:21	373n116, 472
11:32f	379	16:22	584n18
11:32	372	16:25	225n20
12–13	381	16:26	370
12:1	135		
12:9	334n112, 343, 343n168		
12:13	488n111	<i>1 Corinthians</i>	25–28, 39, 40, 92, 216, 289n47, 326n58, 329, 331n91, 373–375, 401, 401n36, 402, 402n40, 403n45, 403n47, 404n49, 408n61, 447, 447n154–157, 448n160, 449–451, 449n161, 449n163, 455, 457, 460n8, 461, 461n15, 462, 465, 467, 470, 471, 471n50, 475, 482, 483, 559n3, 579n78, 592n55, 645, 645n113
13:1–7	381, 381n148		
13:5	592n56		
13:8–10	387n19		
14f	371, 372n113, 376, 379		
14	359n54, 360, 379		
14:1–15:13	183n162, 372n110, 381, 382		
14:1–12	382n154		
14:1–5	371		
14:10	372		
14:14	15n35, 133n135, 183		
14:20	15n35		
15	463, 464, 468n40, 478, 481, 483	1–4	26
15:7–13	382n154	1:1	26
15:7–12	372	1:2	449n163, 488, 488n110
15:8f	359n54	1:4	326n59

1:11	26, 450	7:1–7	402
1:12	471	7:1	26, 402, 403n44
1:13	329n81	7:2	333
1:16	464	7:3–5	60n90
1:22f	181n154	7:5	335, 402
1:23	181n155	7:6	93n98, 386
1:26	346	7:8–9	402
1:28–30	488n108	7:10f	27, 53n58, 76, 92, 97, 386, 389n30, 593
1:29	488n108	7:10–11	401–403
1:30	134n144, 336n127, 469n45	7:10	95, 285n25, 387n17, 387n18, 390, 401, 447n156
1:31	488n108	7:12–16	93, 402
3:9–17	451n175	7:12–15	453
3:10f	451n175	7:12ff	414n11
3:13	359	7:12	414n11
3:16f	134n144	7:14	336n127, 488n110
3:17	336n127, 451n175	7:17–24	402, 403n44, 445n145
4:4	350n12, 469n45	7:17–23	444, 446
4:14	26	7:17–19	373
4:17	400	7:17f	181, 588n39
5–14	26	7:17	400, 445n149
5–10	357n39	7:18f	619
5–7	335	7:18	579n78
5–6	26, 469	7:19	347
5	27, 38, 645	7:21–24	445n146
5:1–13	645	7:25–38	402
5:3–5	26	7:25f	332n100
5:5	336n126, 451	7:25	26, 92n95, 93n98, 386, 387n18
5:7	451, 453n180	7:26–35	403n44
5:9	26, 451, 460, 468n38, 645, 654	7:32–35	402
5:10	425	7:32	444
5:11	131n125, 468n38, 645, 654	7:34	444
5:13	336n126, 451, 645	7:36–38	333n107
6:1f	336n127	7:39f	93, 366n86, 594
6:1	335n117	7:39–40	385, 403
6:9–11	131n126	7:39	27, 86n67, 93–95, 385n15, 386, 387, 388n22, 389, 389n26, 390
6:11–20	134n144	8–10	469, 591n51
6:11	336n127, 469n45, 488n110	8:1–11:1	404
6:16–18	443	8:1–13	404
6:18	334	8:1	26, 403n44
6:19	336n126, 336n127, 451n176	8:4	593
7	27, 95n106, 331n90, 390, 390n32, 399, 402, 403, 437n120, 597	8:7–12	593n58

8:7f	371n109	11:24	404
9	27	11:25	404
9:1–10:22	404	11:26	404
9:1	404	11:27	404
9:2–5	465	12–14	469
9:2	404	12:1	26, 329n81, 403n44
9:3	26, 461	12:2	93, 181, 645n113
9:4f	337n129, 345	12:12f	296
9:4	233n59, 404	12:13	181n154, 391n36, 445n145, 445n148
9:5	404		
9:6–14	338n136	13	337n130
9:6	509n35	13:1	489
9:8f	387n19	14	27, 399
9:13	404	14:16	599n82
9:14	337, 401, 404, 465	14:21	387n19
9:15	404, 447n156	14:33–37	433, 447
9:19–23	322n35	14:33	488
9:20	181n154	14:34	387n19
9:21	387n18	14:36–39	447n156
9:39f	366n86	14:37	57n76, 92n95, 387n18
10	27, 597	15–16	26
10:1–4	595	15	399, 408, 596, 598
10:1	329n81	15:1–7	401
10:4	595n68	15:1–3	103n131
10:7	455	15:3–8	396, 408, 409
10:16	599n82	15:3	331n88
10:18	181	15:5	409
10:21	336n126	15:9	449n163, 656n172
10:23–11:1	404	15:50	409n64
10:24	595n68	15:51–56	596
10:25–29	593	16	463, 465
10:32–11:1	322n35	16:1–4	461, 463, 471, 481, 568
10:32	181n154, 449n163	16:1–3	344n173
11–14	135, 447	16:1–2	463
11	26, 27, 399, 446	16:1	26, 459, 463n26, 468, 473, 484, 488
11:2	331, 400		
11:3	446	16:2	472
11:6	446	16:3f	463
11:9	446	16:3	36, 40, 464
11:10	447, 447n154, 489n118	16:15	464, 473, 479, 488n111
11:16	447, 449n163	16:19	450n166
11:20	344n175	16:21	584n18
11:22	449n163		
11:23–26	401	<i>2 Corinthians</i>	289n47, 375, 381, 411–497 , 559, 566, 579, 645, 646
11:23–25	396, 401, 404, 408		
11:23	103n131, 331n88, 404, 447n156	1–7	454, 471
11:24f	95n106	1:1	449n163, 487n107

1:3	326n59		460n12, 461n13, 463,
1:12	592n56		464, 468n40, 481, 483
1:19	324n48	8	411n1, 457, 459, 459n6
2:3	460	8:1–15	469
2:11	451	8:1–4	459
3–5	453–455, 454n184, 461,	8:1	476
	482	8:2	469
3	381n147	8:4	464, 469n43, 470n46,
3:1	455n188, 461n13		473
3:6f	376	8:6	472, 479
3:7	181	8:9	469
3:13	181	8:10	459n5
3:14	454	8:13f	474n56
3:15	454	8:14f	470
4:3	454	8:16–24	469
4:4	131, 182n159, 453, 454,	8:16	479
	456	8:18f	472
4:7	332n98	8:23	472, 479
5	452n178	9	411n1, 457, 459, 459n6
5:10	350n12	9:1–15	469
5:11	592n56	9:1–4	459
5:12	455n188	9:1	464, 473
6	597	9:2–4	472
6:6	343	9:2	459n5, 472
6:14–7:1	135, 336n126, 411,	9:4	476
	411n1, 414, 415n17,	9:5f	471
	415n18, 421n43,	9:6	469n43
	422n49, 439, 443, 449,	9:8	469n45
	451–453, 452n178,	9:10–12	469
	453n180, 454n186, 455,	9:13	470n46
	455n190, 456, 460, 461,	10–13	454–456, 454n184, 461,
	655		461n13, 462, 482
6:14–18	590, 600	10–12	471
6:14–16a	413, 440	10:8–18	455n188
6:14f	422n54, 441	11:4	454, 579n78
6:14–15	425n57	11:5	455n187
6:14	412, 453–455	11:7	225n22
6:14a	413n5	11:13	376, 454, 462, 475,
6:15	179n143, 412		579n78
6:16–18	441, 442	11:14	451
6:16	412, 441, 443, 455	11:16–26	601n92
6:16b–18	413	11:21ff	378
6:17	412, 441	11:22–25	181
6:18	413, 440, 442, 443	11:22f	376
7:1	336n127, 413, 414	11:22	181, 181n158a, 454
7:12	453, 460	11:24f	646, 656
8–9	344n173, 456, 458–460,	11:24	324n43
	458n4, 460n8, 460n11,	11:26	376, 475

12:1–5	409	1:16	645
12:2–4	406	1:18–20	466
12:4	489	1:18f	409, 491
12:7	451, 489	1:18	103n131, 409n66
12:11	455n187, 489	1:19	103n130, 364n70
12:21	131n126	1:21–24	466, 482, 568
12:24	131	1:23	216, 656n172
13:1	645	2–3	368n91
13:12	488n109	2	375, 465, 509n35, 570, 597
<i>Galatians</i>	181, 217, 289n47, 328n76, 367, 370, 371n105, 375, 381, 393, 395–398, 396n14–16, 397n19, 415, 445, 445n148, 445n150, 446n151, 446n152, 454, 457, 457n1, 459n6, 464n31, 465, 465n33, 466, 466n34, 467n36, 467n37, 468n39, 472, 474, 475, 482, 482n82, 483, 566, 566n33a, 567, 567n34–36, 568n37–39, 569–572, 575n65, 577, 577n72, 579n77, 588n38, 590	2:1–10 2:1 2:4 2:7–10 2:7–9 2:7f 2:7 2:8 2:9 2:10 2:11–21 2:11–14 2:11 2:11b–13 2:12–14 2:12f 2:12 2:12a 2:14 2:15–21 2:15f 2:15 2:16 2:17 2:21 3 3:1–6:10 3:1–4:31 3:1	27, 347, 370, 371n106, 409, 466, 477, 478, 482, 568, 588 409, 409n63, 466 378, 378n138, 455, 475, 475n60, 577n73a 396, 465 103n130, 103n132, 366, 371, 396n15 371n105 225n21, 396, 566n33a, 567 567 371n105, 455n187, 457, 491 344n173, 467, 473, 480, 481 466, 482 103n132, 109n11, 295, 397, 462, 568, 619 344n175, 378 371 371 375 397, 475 371 183n162, 216, 371n107, 375, 379, 445n150, 466 375, 567, 568 352, 373 181n155 363, 379n141 380 466 588n38 466 568 380
1:1–12	466, 482		
1:1–5	566, 567		
1:6–12	566		
1:6–11	567		
1:6–9	371		
1:6	455, 567		
1:7	396, 396n15, 397, 566n33a		
1:11–16	409		
1:11f	466		
1:12–2:14	567		
1:12–14	567		
1:12	395, 397n19, 409		
1:13–2:21	397, 567		
1:13–17	467		
1:13–16	549n82		
1:13f	216, 445n150, 575n62		
1:13	449n163, 656n172		
1:14	216, 322n32		
1:15–2:21	478		
1:15–20	567		

3:2	370n104	2:19	182
3:4	376	3:4	182
3:5	370n104	3:6	182
3:16	588, 588n38, 589	3:9	182
3:26f	588	3:10	449n163
3:26–29	445n148	4:11	225n23
3:28	181n154, 346, 371, 391n36, 445, 445n145– 148, 446, 567	4:12	488n111
		6:5	446
3:29	455	6:9	356
4:6	264n6, 363	6:14	247n50, 257n18
4:25	182n160	<i>Philippians</i>	289n47, 375, 476n62
4:26	457	1:1	487n107
4:29	216	1:5	476
4:30	589n45	1:7	476n63
5:1–6:10	568	1:13	476n63
5:2–6	445	1:17	476n63
5:2–3	567	3:2f	376
5:2f	103n132, 367, 380, 588	3:4–11	549n82
5:2	366	3:5	181, 181n158a, 584n19
5:3	366, 375, 380, 391, 588n39, 599n82	3:6	216, 322n32, 656n172
5:6	371, 391n36, 445n145, 567	3:12	469n45
5:11	588	3:20	182n160
5:14	387n19	4:3	476n63
5:16–26	131	4:10–23	476n62
5:20	455n189	4:10–19	476
6	381n147	4:15f	344
6:2	387n16	4:15	232n58, 476, 523n105
6:6–8	469	4:22	476n63, 488
6:11–18	466, 482, 568	<i>Colossians</i>	289n47, 375, 444n139
6:11–16	445, 469	1:2	487n107
6:11	466, 468n38, 584n18	1:3	326n59
6:12	216, 371, 396, 396n15, 397, 567, 579, 579n77, 588	1:4	488n111
6:15f	371, 373, 588n39	2:7	400
6:15	391n36, 445n145, 567	2:11f	376
6:16	181, 445n149, 455	2:21f	183n163
<i>Ephesians</i>	182, 353, 444n139, 461n13	3:5	455n189
1:1	487n107	3:10f	445n148
1:3	326n59	3:11	181n154, 391n36, 445n145, 445n146
1:15	488n111	3:18	446
2:11	182	3:22	446
2:12	182	3:25	356
		4:14	476n65, 480n78
		<i>1 Thessalonians</i>	181, 216, 217, 317–346, 375n126, 450, 468n38

1–3	325, 326	4:1f	103n131, 323, 330, 331,
1:1	323		334
1:2–10	325	4:1–2	337
1:2	326n59	4:1	327, 330, 394n4
1:5	323	4:1–8	329
1:6	323	4:2	330
1:9f	323, 325n53	4:3–8	323, 325n53, 327, 331,
1:9–10	324n47, 450		337
1:9b–10	326	4:3ff	336n120
1:10	326, 331n95	4:3	326, 331n92, 334
2:1–12	337	4:4–6	346
2:2	217, 323	4:4	331n92, 332, 335
2:3–12	337	4:6–8	337
2:3	327n66, 337	4:6	332, 335, 337
2:5	337	4:7	331n92, 335, 336
2:7	323, 331n90, 337n129	4:9–12	323, 326n62, 329, 337,
2:8	323		346
2:9–12	330	4:9f	338
2:9	337, 344, 345	4:9	329, 330, 337, 343
2:12f	325	4:11	338, 344
2:12	326, 330n84, 331n95	4:12	327, 330, 338
2:13	323	4:13–5:11	323, 326
2:14–16	181, 181n153, 215,	4:13	329, 330, 596n72
	216n115, 324–326,	4:14	326n61
	325n51, 377n128,	4:15	329
	449n161, 450, 450n172	5:1–10	325n53
2:14	181n156, 184, 217,	5:1	329, 330
	218, 233, 372, 375n126,	5:2	329, 331n91
	449n163	5:3	326n61
2:16	468n38	5:5	326n61
2:17f	323	5:8f	326n61
2:17	217	5:12–22	326
2:18	326n56, 450	5:12–15	323
2:19	326, 326n61	5:12	330
3:1f	324n48	5:14	330, 338
3:1	323	5:16–28	323
3:3	323	5:23f	326
3:4	323	5:23	331n95
3:5	326n56, 450		
3:6	323	<i>2 Thessalonians</i>	444n139, 451
3:11–13	326	1:3	326n59
3:11	323	1:4	449n163
3:13	326, 331n95, 450,	1:10	489
	453n180, 489	2:1–12	451
4–5	325, 326n61	2:3–12	422n54
4:1–12	217n121, 325n54,	2:3	451
	326–328	2:9	451
4:1ff	399	2:15	400

3:6–13	338, 338n136	1:25	365
3:10	338n136, 344	2:1	356
3:14	654	2:8	365
3:17	584n18	2:10	365, 366, 375, 599n82
		2:12f	360
<i>1 Timothy</i>	444n139, 584n18	2:12	365
2:8	134	2:20	369n96
5:3–16	594n64	2:21–23	368
5:10	125n92, 488n111	2:24	369n97
5:18	404n49, 522n101	4:4	342
		4:6	251
<i>2 Timothy</i>	444n139	4:11	363n65, 365, 367, 368
1:5	324n49	5:3	355
4:5	225n23	5:9	250n62
4:11	476n65, 480n78, 548	5:17	490n119
4:14	359		
4:19	450n166	<i>1 Peter</i>	334n109
		1:3	326n59
<i>Titus</i>	183, 185, 444n139, 584n18	1:13	247n50, 257n18
1:4	183	1:17	359
3:4	342n162	1:22	342, 343
		2:4–9	444n142
<i>Philemon</i>		3:3	91n84
5	488n111	3:7	334, 335
7	488n111	3:8	342
12	468n38	3:11	343n169
24	476n65	4:3	455n189
		4:14–16	630n41
<i>Hebrews</i>	342	4:15f	630n40
1	408n60	4:16	638n81, 641n92
6:10	488n111		
8:8	288n39	<i>2 Peter</i>	
8:10	288n39	1:7	342
13:1	342	2:12	58n81
13:24	488n109		
		<i>1 John</i>	387n18
<i>James</i>	354, 354n34, 360, 362n60, 363–365, 363n64, 364n70, 364n71, 364n73, 364n74, 365n77, 365n81, 365n82, 367, 367n89, 368n91–93, 370n101, 374, 375n124, 378n135, 508n31	1	408n60
1:4	355	<i>3 John</i>	
1:22–25	363n65, 367	7	516n74
		<i>Jude</i>	456n191, 486, 489, 490, 490n123
		3	489
		10	58n81
		14–15	251
		14	489, 490

<i>Revelation</i>	183, 184, 237n11, 359, 486, 489, 548n77, 593	4:3–5	513n57
1:12–20	486n99	4:11	509n38
2:9	179n143, 183	6:15	509n38
2:14	593n59	6:18	509n36
2:20	593n59	7:3	509n38
2:23	359	13:1	252n66
2:24	593n59	16:1–10	509n38
3:9	179n143, 183	16:1–4	512n53
3:20	241n30, 246, 247n51, 250, 250n62, 256, 258	17–21	509
4	408n60	18–20	507
4:5	256n14	18:1–19:1	424
5:8	489n116	18:1	400n31
8:3f	489n116	18:2	422n54, 454
8:10	256n14	19:10	487n103
14:4f	437n120	20:1	424
18:2	131n122	21:1	507n25
20:9	489		
21:21	372	<i>Chrysostom</i>	
22:12	359	Hom in Matthaëum	

51	134n141
Hom in Romanos	
	369n97
5.5	369n96

Apostolic and Patristic Writings

Apostolic Constitutions

	134, 487n103
2.43	638n79
3.8	638n79
4.8	638n79
8.32.18	134n139

Athanasius

De virgin. 6	464n28
12	464n28

Augustine

De diversis quaestionibus	
	369n96

Barnabas (Epistle of, Pseudo-)

	133, 252, 252n66, 400, 416, 423, 424, 501–532 , 541, 582n8, 589n43
1–16	509
1:1	440n133
1:5	509n37
2:6	509n38

1 Clement

	487, 508, 557, 557n115, 659
1:1	557n115
5–6	584n18
5	552n93, 584n18
30:1	334n112
46:2	487n104
47:4	342n163
48:1	342n163
49:1–50:5	337n130

2 Clement

19:1	440n133
20:2	440n133

Clement of Alexandria

Protrepticus 6.70	109n8
Stromata	
1.5.28–32	333n108
3.8.62.2–3	414n11
4.22.142	111n20, 112n26, 133n137
5.9.57.5	414n11

<i>Clementine Homilies</i>		9:5	233n59, 522n101
	134	10	522
7.8.2	134n142	11–13	480
		11:3	233n59, 522n101, 522n103, 523n105
<i>Cyril of Alexandria</i>			
Cataena in Lucam		11:4f	344
MPG 72: 685, 688, 692		11:7	522n101
	264n11	12:1–3	344
		13:1–7	465
<i>Didache</i>	132, 132n130, 233, 252n66, 261–277 , 290n53, 292n62, 293n69–71, 294, 294n78, 295n79, 295n82, 329, 329n79, 340n152, 345, 345n176, 346, 364n67, 400, 416, 416n20, 419n38, 422n48, 423, 424, 440n133, 480, 487n103, 501–532 , 541, 541n38, 582n8, 601n91, 652n149, 660n187	13:2	404n49, 522n101
		14:1	630n37
		15:3	233n59, 522n101, 523n105
		15:4	464n28, 522n101, 523n105
		16:1	247n50, 257
		16:7	489
1–6	522		
1–5	507		
1:1–2	423		
1:3	400n31		
4:2	487, 490		
4:8	345n176		
5:1	423		
6:1	400n31		
6:2–3	507n27, 525, 525n115		
6:3	522n103, 593n59		
7–15	522		
7	522		
7:1–3	132		
7:1	266, 522		
7:4	266, 522		
8	262n2, 266, 267, 293, 295n79, 516n76, 522–524, 523n105, 526		
8:1–2	262, 523n106		
8:1f	292n62, 522		
8:1	245n43, 266, 293n68		
8:2	233n59, 293n68, 522n101, 523n105		
9:1	266, 522		
9:3	522n103		
		<i>Didymus the Blind</i>	
		Comm in Zach	
		8.9	369n96
		Fragm in 2 Cor.	
		32	414n11
		In Gen 151	414n11
		<i>Doctrina Apostolorum</i>	
			487n103
		26	133n138
		<i>Epiphanius</i>	
		Haereses	
		1.211	256n21, 523n108
		78.7	634n58
		Panarion	
		1.459	582n6
		2.255	232n58
		<i>Eusebius</i>	
		Church History	506n22
		2.4.2	160n68
		2.12.2	478n69
		2.25	631n46
		2.25.5–8	584n18
		2.25.5	552n93
		3.1.1f	631n46
		3.2	552n93
		3.4.6	618n78
		3.5.2	280

3.9.1	160n68	GCS 1: 346	237n10
3.20.8	557n116	Armenian Fragment	
4.3	252n65	GCS 1: 361	249n57
4.6.1–4	510n44	Greek Paraphrase (ed Richard)	
4.6.3–4	494	1.16	236n5
4.8.4	511n48	2.5	249n56
4.22.7	118n60, 229n40		
5.8.3f	285n25	<i>Ignatius</i>	
5.20.5	320n18	Ephesians 19:2f	294n77
6.22.1	237n8	Magnesians	
Comm in Psalms	369n96	8:1	295n84
Demonstratio evangelica		9:1	295n84
1–5	281n8	10:3	295n84
9.11	281	Philadelphians 6:1	
Eclogae proph			295n84
3.10	634n58	Polycarp 2:2	294n77
Praeparatio evangelica		Romans	
8.5.11	64n113	4	584n18
8.7.3	57n74, 57n77	4:3	552n93
8.8.34	160n68	Smyrnaeans	
8.10.18f	64n113	1:1	294n77
8.11.1f	64	1:2	295n84
8.11.2	340n151		
		<i>Irenaeus</i>	
<i>Gospel of Thomas</i>		Adversus Haereses	
	433	3.5.3	320n18
20	433n101	3.11	232n58
54	433n101	3.14.1	552n93
62	433n101	4.9.1	243n35
114	433n101	5.34.2	320n18
130	433n101		
		<i>John of Damascus</i>	
<i>Gospel of Peter</i>	295n81	In Corinthios	463n26, 464n29
8–10	294n75		
50	432n97		
		<i>Justin</i>	
<i>Gregory of Nyssa</i>		1 Apology	
Hom in Cant 6.428	369n96	1.26.7	627n23
		31.6	511n48
		Dialogue	
<i>Hermas</i>	101, 102n125, 487, 659	38	642n95, 652n153
Mand 10:1	342n163	38.1	661n193
14:2	487n104	46.2	112n26
29:6 (mand. 4)	72n14, 101n122	80.4	118n60, 229n40
74:1	487n104	134.3	252n**
		<i>Leo the Great</i>	
<i>Hippolitus, in Canticum</i>		Sermons 6–11	458n3
Slavonic Fragment			
GCS 1: 344	237n9		

- Martyrdom of Ignatius*
4.6 414n11
- Origen*
Cels
1.28 634n58
32f 634n58
69 634n58
Comm in Ioan
19.21.139 414n11
20.5.39 280n6
32.24.302 414n11
32.24.382 414n11
Comm in Matth
10.18 280
11.8 134n141
11.17ff 280n6
11.17 280
Comm in Rom 384n8
De orat
2.4f 271n49
18 265n12
25.3 414n11
31 265n13
De princ 4.3.8 280n4, 280n6, 473n53
Expos in Prov 369n96
Fragm ex Comm in I Cor.
18 638n79
35 414n11
Comm in Cant 9 249n55
Hom in Cant
Prologue 1.7 240n27
Prologue 4.4–16 236n4
1.1 236n2, 236n4
3.1 237n9
Scholia in Cant 249n55
Scholia in Matt 246n49, 258n21
- Photius*
Bibliotheca 33 536n14
- Pseudo-Clementine Epistula*
346
ad virgin 1.2.8 346n184
- Theodoret*
In Cor 464n29
- Tertullian*
Apol 1–5 631n44
- Tractatus Apostolica*
16 132n127, 137n153
35 134n139
41 134n139
41 (L) 134n140
- Rabbinic Texts**
- Mishna* 3, 7, 10, 11n16, 13,
14n29, 15, 18–20,
19n51, 25, 28, 29, 33,
35n44, 38, 39, 47, 49,
52, 54–56, 54n61, 58,
73, 76, 88n73, 88n77,
91, 92, 92n92, 109,
111–113, 113n38, 116,
116n52, 119, 119n64,
120, 123, 124, 124n87,
126n96, 127n102,
128n106, 130, 136,
138n160, 150n30, 152,
156n53, 163–168,
164n86, 165n88,
172–174, 173n130,
188, 193, 193n26, 196,
206n79, 240, 264n7,
270–272, 272n55, 276,
290n53, 291, 306n34,
319, 320n17, 321n23,
321n27, 345, 360,
365n76, 389, 398, 407,
425, 425n61, 427–430,
431n89, 492, 493, 525,
527, 556n107, 583,
583n10, 587, 587n36,
588n39, 589n42,
589n44, 591n51, 592,
597, 599, 600, 600n90,
601n92, 605n15, 614,
616, 632, 632n48, 646,
649–651, 649n129,
653n156, 653n159,
654n162, 660
mAvot 364, 398

mAv	599	mBer 2:3	118
mAv 1:1	546n65	mBer 2:5–7	55n67
mAv 1:2	57n73, 365n75	mBer 2:5	117
mAv 1:3	257n17	mBer 2:6	371n109
mAv 1:4–12	393n1	mBer 2:8	117
mAv 1:10	206	mBer 3:1	117
mAv 1:12–15	138n160, 616n73	mBer 3:4–6	449n161
mAv 1:13	345n179	mBer 3:4	115n48, 118, 127n104
mAv 1:16–2:4	616n71	mBer 3:5	128n111
mAv 1:16	614n60	mBer 3:5a	118
mAv 1:17	363n65, 365n80	mBer 3:5b	118
mAv 2:3	206n79	mBer 3:6	118, 123, 129, 136
mAv 2:4	25, 427	mBer 4:1–4	273
mAv 2:8	616n73	mBer 4:1	266n23, 524n111, 527n120
mAv 2:10–11	616n73	mBer 4:3–4	527n120, 528n126
mAv 2:13	273n57	mBer 4:3f	652n149
mAv 2:15f	345n180	mBer 4:3	270n41
mAv 2:17	527n121	mBer 4:4	118, 270, 528n128
mAv 3:4	427n66	mBer 4:5 (ms K)	652n150
mAv 3:7	589n45	mBer 5:1	118, 265n13
mAv 3:9	363n65	mBer 5:3	426
mAv 3:11	365n75	mBer 9:5	426, 653n159
mAv 3:17	363n65	mBik 3:4	546n66
mAv 4:1	554n101	mBK 5:6	432n94
mAv 4:5	345n179, 363n65	mBM 4:3–9	336n122
mAv 4:11	616n74, 617n75	mBM 7:1	432n94
mAv 5:6	365n75	mDem 2:1	517n77
mAv 5:14	363n65	mDem 2:2f	647n123
mAv 5:17	554n101, 616n74, 617n75	mEd 1:3	17n42, 55n68
mAv 5:21	439n131	mEd 1:4–6	615n64
mAv 6:2	365n77	mEd 4:7	85n65
mAZ 1:1	633n51	mEd 5:3	517n77
mAZ 1:5–8	284n20	mEd 5:7	126n94
mAZ 1:5–7	418n34	mEd 7:7	272n52, 531n137, 535n10, 660n189
mAZ 2:1	164, 172n128, 189	mEr	179n148
mAZ 2:3–7	14n27	mEr 4:8	3n2
mAZ 2:3	633n51, 653	mGit 5:2	31n32
mAZ 2:5	13	mGit 9:1	93
mAZ 2:6	164, 164n86	mGit 9:1 (ms K)	86
mAZ 3:4	111n22	mGit 9:2	167
mAZ 4:4	164	mGit 9:3	36, 93, 95n106, 166, 167n98, 388n22, 389, 389n27
mAZ 4:7	593n58	mGit 9:3 (ms K)	86
mBB 8:3–4	590n46	mGit 9:6	168n103
mBB 8:5	34	mGit 9:8	168n102, 168n103
mBer 1:1	116		
mBer 1:3	55n67		
mBer 2:1	118		

mGit 9:10	54n59, 67n*, 75, 76, 90, 91, 91n89, 97, 101, 292, 306, 388n23, 594, 606n20	mMeg 1:3	266n21, 527n117
mGit 9:10 (ms K)	86	mMeg 1:8	320n17
mHag 1:1	406, 406n56	mMeg 2:4	430
mHag 1:8	4n9, 517n77	mMeg 3:6	266n21, 527n117
mHag 2:1	240n27, 408n60	mMeg 4:1	266n21, 527n117
mHag 2:2	138n160	mMeg 4:6	431n89
mHag 2:3	117n56	mMeg 4:9	156n53, 426
mHag 2:5	17n40	mMen 10:1–3	49n35, 527n119
mHag 2:5–3:6	17n40	mMen 13:10	114n40
mHal 4:8	114n40	mMid 2:2	650n140
mHal 4:10	114n40	mMid 2:5	49n36
mHal 4:11	114n40	mMid 5:4	49n36
mHor 3:8	600n86	mMik	128
mHul 2:7–9	632n49, 653n156	mMik 1	124n83, 132n130
mHul 2:7	12n22, 284n21, 377n131, 428n73, 592n54	mMik 1:5	17n42, 128n107
mHul 2:9–10	653	mMik 2:2	17n41
mHul 12:1f	59n85	mMik 2:3	19n52
mKel 1:1–4	117n56	mMik 2:4	17n42, 19n52
mKel 1:1–3	19	mMik 2:7–10	17n42, 19n52
mKel 2:8	256n14	mMik 4:1	17n42, 20n54, 128n107
mKel 5:10	427n69	mMik 4:5	128n107
mKet 4:3	491	mMik 4:9	124n82
mKet 4:12	168n100	mMik 5:4	128n106
mKet 5:6	439n131	mMik 5:6	128n107
mKet 6:6	31n32	mMik 8:1	113n35, 124
mKet 7:1	60n90	mMik 10:6	128n107
mKet 7:6	78n30, 90, 164, 171n119, 193n26, 196n39, 318n8	mMK 1:1	124n82
mKet 7:9f	81n47	mNed	517n77
mKet 7:56	197n41	mNed 1:12	171n119
mKid 1	85n65	mNed 3:11	305n31
mKid 1:1	85n65, 333n106, 388, 388n22	mNed 4:3	4n10, 587n34
mKid 1:1 (ms K)	85	mNed 9:1	270n46
mKid 1:2	150n30, 333n106	mNed 9:5 (ms K)	529n131
mKid 1:6	150n30	mNed 11:12	88n75, 90n82, 165, 168, 193n26, 196n39
mKid 2	85n65	mNid 1:3 (ms K)	4n11
mKid 4:14	366n85, 589n45	mNid 7:4	91n88
mMaas 4:5	517n77	mOh 2:3	113n35
mMak 2:8	10n11	mOh 16:1	20n54
mMak 3:10	601n92, 646n114	mOh 17:5	113n35
mMakh 1:3	591n51	mOh 18:6f	113n35
		mOh 18:7–10	287n34
		mOh 18:8	287n35
		mPara 3:7f	613n58
		mPara 2:3	635n63
		mPea 1:1	439n131
		mPea 2:6	393n1, 614n60
		mPea 8:7	345n181

mRH 1:1	47n32	mTaan 3:8	264n6, 608n34, 650n138
mRH 1:4–6	47n30	mTam 5:3	5n17
mRH 2:5	47n29	mTem 1:4	124n83
mRH 2:8–9	47n29	mTem 2:1	30
mRH 3:8	431n89	mTem 5:6	124n83
mSan 3:5	245n42	mTer 1:6	9n3, 119n62
mSan 4:5	317n2, 588n38, 590, 653n157	mTer 2:1	9n3
mSan 9:6	474, 610n45	mTer 4:3	9n3
mSan 10:1	600n89	mTevY 3:4–5	17n41
mSan 10:3	600n89	mToh 1:5	16n36
mSan 10:4	33n37, 40	mToh 2:2	11n18, 17n39, 17n41
mSan 10:6	600n89	mToh 3	15n35
mShab 1:3–4	19	mToh 4:7–13	19n52
mShab 1:4	11, 13, 14, 14n27, 20, 164n86, 290n51, 428n75, 606n19, 648n128	mToh 4:7	124n83
mShab 1:5–10	14n28	mToh 4:11	17n41
mShab 1:5–9	14n28	mToh 7:8	126n95, 127n102
mShab 1:9	20n53	mToh 7:8b	18n45
mShab 1:10	14n28	mUk 3:6	517n77
mShab 6:2	12n22	mYad	15, 15n33
mShab 6:4	12n22, 53, 606n20	mYad 1:1–3:2	126
mShab 19:3	304n27	mYad 3–4	15n33
mShek 5:2	5n19, 321n24	mYad 3:1–2	15n32, 16
mShev 4:3	593n58	mYad 3:1	17, 17n40, 17n43, 18n44
mShev 6:1f	114n40	mYad 3:2	17n39, 125
mShev 8:9	654n163	mYad 3:3–5	9
mShev 9:2	113n36	mYad 3:5	91n89, 236n3, 240n25, 428n77
mSot 5:2	9n6	mYad 4:2–4	11n16
mSot 1:7 (ms K)	360n57	mYad 4:4	211n100, 428n77, 449n165
mSot 3:4	608n34	mYad 4:6	9, 16, 50n39, 583n10
mSot 5:1	88n75	mYad 4:7	25
mSot 5:2–5	11n16	mYad 4:8	166n91, 166n96, 229n40
mSot 5:2	125n90, 590n46	mYev	648
mSot 7:1	320n16	mYev 1:4	25, 55, 69, 388n21, 428n72, 648n126
mSot 7:8	546n66	mYev 2:4	491n126
mSot 9:9	88n76	mYev 4:12	88n73
mSot 9:15	292n60, 490n122, 493, 545n62	mYev 8:3f	449n165
mSot 9:16	365n79, 515n65	mYev 9:3	81n47
mSuk 4:9	595n69, 613n58	mYev 11:1	491
mSuk 5:4	365n79	mYev 16:5	168n105
mTaan	137	mYom 1:5	51n47
mTaan 1:6	266n21, 527n117	mYom 1:6	611n48
mTaan 2:9	266n21, 527n117	mYom 3:4	371n109
mTaan 3:1	266n21		

mYom 3:10	576n68	tBeitsa 2:15	458n3
mYom 4:2	491	tBer 2:1–2	527n120
mYom 8:9	502n3, 515n65	tBer 2:10	244, 244n37
mZav 4:1	19	tBer 2:12–14	449n161
mZav 5	18	tBer 2:12	587n34
mZav 5:1	17n43	tBer 2:12a	118, 127n104
mZav 5:3	10n11	tBer 2:12b	118
mZav 5:7	19	tBer 2:13	118, 119
mZav 5:10f	19	tBer 2:18	118, 125
mZav 5:11	117n56	tBer 2:20	111n23
mZav 5:12	7–20, 7n*, 16n37, 17n39, 17n40	tBer 3:1–3	266n23, 524n111
mZev 1	592n52	tBer 3:5	271n48
mZev 1:3	11n16	tBer 3:6	118, 124n86
mZev 4:5	592n53	tBer 3:7	270, 528n128
mZev 4:6	592n52	tBer 3:12	270n39
		tBer 3:14	515n65
		tBer 3:25	652n150
<i>Tosefta</i>	11n16, 14n29, 28, 33, 51n47, 54n61, 112, 113, 117n59, 119, 123, 124, 124n82, 126, 130, 164n86, 165, 168, 174, 177, 193, 193n26, 244, 264n7, 270, 270n45, 271, 304n25–27, 305, 306n33, 312, 360, 360n57, 398, 426, 428n72, 430, 431n91, 587, 590n46, 632, 632n48, 633, 634n56, 635, 635n62, 641, 641n93, 646, 647, 647n121, 648n125, 648n127, 652, 652n150, 653n158, 654, 654n162, 655, 659, 660, 660n190	tBer 5:6	126n97, 130n115
		tBer 5:13	126n97, 130n115
		tBer 5:14	119n61
		tBer 6:1	426n64
		tBer 6:7	426n64
		tBer 6:24	274n59, 652n149
		tBik 2:10	546n66
		tDem	647
		tDem 2	599n83
		tDem 2:2–7	588n39
		tDem 2:2	647n123
		tDem 2:4f	366n87
		tDem 2:5	611n46, 647n123
		tDem 2:9	647n123, 655n169
		tDem 2:11	17n40
		tDem 2:12	647n121
		tDem 3:4	655n169
		tEd 1:3–5	615n64
		tEd 1:3	124n83
		tEd 2:1	427n69
		tEd 2:3	614n63
tAh 17:6	113n35	tEr 3:5–7	52
tAh 18:1–5	113n35	tGit	74
tAh 18:7–11	287n34	tGit 1:3	634n56
tAhil 4:14	3n2	tGit 3:5	78n31
tAr 4:5	592n54	tGit 7:1–5	86n68, 93n99
tAZ 1:15–2:1	173n131	tHag 2:1–7	240n24
tAZ 3:1f	654n163	tHag 2:1	240n27, 245n44, 406n56, 515n65
tAZ 3:3	164n84		
tAZ 3:4	654n167	tHag 2:9	38n60
tAZ 3:5	531n138, 660n190	tHag 3:5	517n77
tAZ 3:6	654n164		
tAZ 4:6	168, 171n119		

tHag 3:9	3n3	tPara 3:8	613n58
tHag 3:11	4n12	tPara 2:2	635n63
tHal 2:5f	114n40	tPea 1:2	59
tHor 2:10	491, 600n86	tPea 2:18	576n68
tHul	642, 643, 656	tPea 4:18f	355
tHul 2	625, 642n95	tPes 1:5–8	18n44
tHul 2:18–24	632	tPes 4:14	613n58
tHul 2:18–21	652	tPes 4:15	546n66
tHul 2:18	632	tRH 1:15	49n37
tHul 2:19–24	276n66, 532n142, 601n91	tRH 2:17	270n39
tHul 2:19	632	tRH 2:18	528n126
tHul 2:20–24	655	tSan 2:5	188n6
tHul 2:20f	652n153	tSan 2:6	33n38, 47n29, 148n22, 583n13
tHul 2:20	632, 655n169	tSan 7:10	3n2
tHul 2:20a	653, 655	tSan 11:2	61n96
tHul 2:20b–21	654n161	tSan 11:7	33n37, 40
tHul 2:21	633, 643n100	tSan 12:10	91n89, 240n22, 258n22
tHul 2:22	633	tSan 13:1–12	600n89
tHul 2:23	633, 634n56	tSan 13:2f	598n75
tHul 2:24	633	tSan 13:2	12n21, 377n131, 428n73
tHul 2:25	653	tShab 1:6–8	14n31
tKel BM 5:1	127n105	tShab 1:11–21	11n15
tKel BM 7:8 (ms Vienna)	127n105	tShab 1:11	305n29
tKet 5:1	33n39	tShab 1:14–16	19
tKet 7:6	165, 318n8	tShab 1:14	126n94
tKet 8:3	60n90	tShab 1:15ff	164n86
tKet 4:9	165n90	tShab 1:15f	290n51
tKet 12:1	77n28	tShab 1:15	20n54
tKid 5:4	168n104	tShab 1:16–17	428n76
tKipp 1:8	51n47, 613n58	tShab 1:16	606n19
tMeg 2:7	430	tShab 1:17	305n29
tMeg 3:11	57n76, 431, 431n91, 448	tShab 1:18	20n54
tMeg 3:13	320n17	tShab 1:19	17n42, 20n54
tMeg 3:21	430n86	tShab 1:21	20n53
tMen 10:23	527n119	tShab 6–7	138n158
tMen 13:18–21	518n80	tShab 13:5	653n158, 654n165
tMen 13:21	42n7, 546n65	tShab 15:9	579n78
tMen 13:22	289n45	tShab 15:16f	305
tMik 3:9–11	17n41	tShab 15:16	270n46
tMik 3:9	17n41	tShab 15:16 (ms Vienna; ms Erfurt)	305n32
tMik 6:1	113n35, 123	tShab 15:16 (ms London)	305n32
tMK 2:16	660n190	tShab 15:17	306
tNaz 5:1	3n2	tShek 3:16	592n54
tNed 7:8	168	tShev 4:6–11	113n36
tNid 6:19	126n95		

tSot 3:1	360n57	<i>Palestinian Talmud (Yerushalmi)</i>	
tSot 5:9	83n56, 87, 88n77, 89, 89n80		4n11, 14n29, 19, 20, 28–31, 32n34, 36, 37, 54n61, 90, 91, 112, 124n82, 125, 129, 130, 143n7, 144, 165, 169, 169n109b, 170, 196, 219, 245, 270n42, 320, 428n72, 430, 431, 494, 633, 648n125
tSot 6:6–10	25n13		173n131
tSot 7:16	546n66		427n66
tSot 15:8	660n190		632n49
tSot 15:8	531n138		633n52, 634n56
tSuk 2:3	614n63		14n27
tSuk 3:1	51n46, 527n119		130n116
tSuk 3:3	595n69		614n62
tSuk 3:11	595		652n150
tSuk 3:16	50n45, 527n119, 613n58	yAZ 1 (39c)	112n26, 118n60, 126n98, 129, 229n40
tTaan 2:4	527n117	yAZ 1:9 (40a)	125n88, 129
tTer 2:12f	114n40	yAZ 2:2 (40d–41a)	129
tTer 3:1f	119n62	yAZ 2:2 (41a)	275n62, 650n142
tTevY 1:8	17n41, 18n44	yAZ 2 (41d)	271n47
tTevY 1:10	16n37	yBer 1 (2d)	652n150
tTevY 2:14	17n41	yBer 1 (3b)	426n63
tToh 1:1	16n36	yBer 2:3 (5a)	130n115
tToh 1:6	18n45	yBer 3 (6c)	608n34
tToh 2:1	17n41		427n66
tToh 5:9	17n41		546n66
tYad 2:9a	17n40	yBer 3 (6d)	170n109b
tYad 2:14	240n25	yBer 3 (7a)	170n109b
tYad 2:17	168n104	yBer 4:3 (8a)	517n77
tYad 2:18	168n104	yBer 4:4 (8b)	647n123
tYad 2:20	229n40	yBer 4:5 (8a)	17n40
tYad 5:2	19	yBer 5:3 (9c)	439n131
tYev	648	yBer 8 (12a)	34n42, 36n48
tYev 1:10–13	388n21, 428n72	yBer 9 (13b)	78n31
tYev 1:10	648n126	yBer 9:1 (13c)	31n31, 36n48, 37n53
tYev 1:13	4n12, 614n63	yBik 3:4 (65b)	83n57, 88n74, 88n75, 89n80, 90n83, 91n85, 91n89
tYev 2:4	81n47	yBik 3 (65c)	36n48, 37n49
tYev 6:5	88n73	yDem 1 (22a)	
tYev 7:5	81n47	yDem 2:1 (22c)	
tYev 14:5	3n2	yDem 2:2 (22d)	
tYev 14:7	168, 168n105, 171n119	yDem 2 (23a)	
tYom 2:14	243n33	yEr 1:10 (19d)	
tYom 4:6	243n33	yEr 3 (21c)	
tZav 5:2	18n47	yGit 4:7 (46a)	
tZav 5:11	19	yGit 5 (46d)	
tZev 2:17	127n102, 592n54		
tZev 5:6	592n53	yGit 9 (50d)	
tZev 5:13	592n52		
tZev 11:16	42n7	yHag 1 (76c)	

yHag 2:1 (77a)	240n27, 245n44, 406n56	yShab 1:3 (3c)	654n163
yKet 4 (29a)	165n90	yShab 1 (3d)	4n12, 17n40, 113n34
yKet 5 (29d)	33n39	yShab 1:7 (3c–d)	290n51
yKet 5 (30b–c)	150n30	yShab 1:7 (3c)	164n86
yKet 5 (30b)	80n46	yShab 10 (12c)	333n104
yKet 7 (31c)	80n46	yShab 16:1 (15c)	653n158
yKet 8 (32c)	17n40, 113n34	yShab 19 (17a)	4n12
yKid 1:1 (58c)	68n2, 93n97	yShek 5 (49a)	169n109b
yKid 3 (64d)	5n17	yShev 1 (33b)	51n46
yKid 3:9 (64b)	239n20	yShev 4 (35b)	173n129
yKil 4 (29c)	5n17	yShev 6 (36c)	113n36
yMaasSh 3 (54a)	14n27	yShev 8 (38a)	14n27
yMaasSh 5 (56c)	33n38, 47n29	ySot 1 (16b)	89n80
yMaasSh 5:8 (56c)	583n13	ySot 3 (19a)	608n34
yMeg 1 (71a)	320n18	ySot 7:7 (21b)	546n66
yMeg 1 (71b)	320n19	ySuk 4 (24b)	51n46
yMeg 1 (71d)	171n121	yTaan 1 (64c)	129n112
yMeg 2:4 (23b)	431n90	yTaan 3 (66c)	169n109b
yMeg 3 (74a)	36n48, 115n48	yTaan 3:12 (67a)	650n138
yMeg 4 (75a)	320n17	yTaan 4:6 (68d)	511n48
yMeg 4 (75b)	36n45, 321n23	yYev 1:6 (3b)	428n72
yMeg 4:9 (75c)	426n63	yYev 2:4 (3d)	492
yMeg 4 (75d)	112n27	yYev 8:2–3 (9a–d)	449n165
yMK 3:1 (81c–d)	649n134, 650n138	yYev 8:2 (9b)	494n139
yMK 3:1 (81d)	649n135	yYev 15 (14d)	165n90
yMSh 2:4 (53d)	494n138, 494n140	yYom 1:1 (38c)	289n45
yNaz 6:1 (54d)	239n20	yYom 1 (39a)	51n47
yNed 3 (50c)	31n30, 36n48	yYom 8 (44d)	112n27, 129n112
yNed 6 (39b)	30n24		
yNed 6:8 (40a)	492n130	<i>Babylonian Talmud (Bavli)</i>	
yNed 9 (41c)	91n89		4n11, 5n17, 9n7, 11, 13, 13n25, 19, 20, 28, 30, 31, 33–35, 37–39, 89n79, 112, 116, 118, 122, 124n82, 127, 129, 143n7, 171, 175, 187, 193n26, 196, 197n41, 205, 430, 494, 546, 583n10, 635n62
yNed 11 (42d)	165n88		
yPea 1:1 (15b)	355		
yPea 1 (15d)	58n84		
yPea 1 (16b)	4n12		
yPes 1 (27d)	17n40, 113n34		
yPes 3 (30b)	37n49		
yPes 6 (33a)	4n12		
yPes 7:1 (34a)	458n3		
ySan 1 (18d)	33n38, 47n29, 148n22		
ySan 1:2 (18d)	583n13		
ySan 1:2 (19a)	492n130	bAZ 8a	168n107, 171n119
ySan 10:5 (29c)	492n130	bAZ 13a	172
yShab 1 (3c–d)	11n17, 12n20, 606n19	bAZ 16b	632n49, 657n175
	13n24	bAZ 17	652n153
yShab 1 (3c)		bAZ 17a	634n57, 642n95

bAZ 26a	172n128, 173	bBer 42a	130n116
bAZ 27a	633n55	bBer 52a–b	130n115
bAZ 27b	632n49, 642n95	bBer 52b	130n116
bAZ 35a–37a	14n27	bBer 55a	171n121
bAZ 35b	14n27	bBer 58a	172n125
bAZ 70a	156n53	bBer 61b	306
bbb 21a	172	bBer 64a	451n175
bbb 41b	30n23	bBK 55a	3n4
bbb 58a	172n124, 172n125	bBK 82a–b	129n112
bbb 58b	172n124	bBK 82a	112n27
bbb 127a	29n19, 37n49	bBK 83a	531n138, 660n190
bbb 127b–129a	34	bbM 59b	275n60, 427n69,
bbb 127b	37n53, 40		649n134
bbb 135b	29n20, 36n46,	bbM 84b	333n104
	38n61	bbM 86a	172n125
bbb 139a	29n19, 37n49,	bbM 114a	29n19, 37n57
	37n53	bEr 13b	426, 614n62
bbb 139b	29n19	bEr 21b	17n43
bbb 144b	29n20	bEr 29b	243n33, 243n35
bbb 152a	29n20, 38n61	bEr 62a	29n21
bbb 165b	37n57	bGit 9b	29n20
bBeitsa 14b	494n139	bGit 44a	37n57, 38n59
bBeitsa 16a	13n25, 20n53,	bGit 57a	171n122
	289n50, 377n130	bGit 60a–b	30n25, 35n44
bBeitsa 23a	458n3	bGit 89b	89n79
bBeitsa 27a	494n139	bGit 90a	86n70, 88n72,
bBekh 8b	170n116, 172n124		92n90, 594n66
bBekh 30b	17n40, 611n46	bGit 90b	87, 88n77
bBer 2a	116	bGit 56a	163n79
bBer 3	129n113	bGit 57a	163n79
bBer 3b	257n19	bHag 9b	171n118, 172, 196
bBer 6c	129n113	bHor 14b	31n28, 35n44
bBer 9b	494n139	bHul 13a–b	642n95
bBer 19a	427n69, 650n138	bHul 34a	17n41
bBer 21b	114n41, 118n60,	bHul 49b	29n20
	129	bHul 59b	36n46
bBer 22	128n111	bHul 76b	36n46
bBer 22a	112n28, 124n87,	bHul 95b	31n29, 36n48,
	127n100, 229n40		37n52
bBer 22b	124n85, 126n98,	bHul 101b	29n20, 29n21
	127	bHul 105a–107b	130n115
bBer 26a	124n87, 129	bHul 105a	136n150
bBer 27b–28a	11n16, 273n58	bHul 105b–106a	132n130
bBer 28a	528n122	bKer 27a	29n21
bBer 28b–29a	650n142	bKet 11a	156n53
bBer 28b	274n59	bKet 46a	29n21
bBer 29b	271n47, 275n62	bKet 49a	29n19
bBer 33b	426n63	bKet 66b–67a	150n30

bKet 69a	31n32, 37n50	bSan 11a	531n137, 660n189
bKet 72b	171n119	bSan 11b	33n38, 38n61, 47n29, 148n22, 583n13
bKid 2a	333n106		
bKid 2b	85n65		
bKid 11b	33n39	bSan 22b	333n104
bMeg 9b	171n121, 171n122	bSan 29a	30n23
bMeg 10a	114n40	bSan 44a	172n126
bMeg 12b–19b	171n120	bSan 51a	29n20
bMeg 12b	333n104	bSan 64a	171n119
bMeg 17a	650n142	bSan 82a	4n12
bMeg 17b	274n59, 275n62, 528n122	bSan 88b	33n37
		bSan 93b	511n48, 512n52
bMeg 23a	57n76, 431	bSan 95b	172n126
bMeg 25a	426n63	bSan 97a	239n19
bMeg 26b	171n118	bSan 105a	377n131
bMen 18a	127n102	bSan 106a	170n116, 171n121, 172n126
bMen 36a	29n22		
bMen 42b	29n22	bSan 109a	171n122
bMen 57b	29n20	bShab 13b–17a	11n17
bMen 79b	29n21	bShab 13b–14a	11n18
bMen 83b	171n122	bShab 13b	13n25, 162n73, 289n50, 377n130
bMen 85b	171n119		
bMK 12a	5n17	bShab 14b	9n7, 17n40, 113n34
bMK 18a	29n21		
bNed 49b	171n121	bShab 15a	614n60
bNed 62b	5n16	bShab 17a	11n17
bNed 81a	38n60	bShab 17b	164n86
bNed 82a	171n119	bShab 31a	22n2, 428n73
bNed 89b	171n119	bShab 64b	90n83
bNid 8a	256n14	bShab 115a	30n23
bNid 47b	37n49	bShab 129a	172n124
bNid 63a	29n19	bShab 132a	304n24, 305n32, 306n33
bPes 3b	34n40, 36n47, 136n148	bShab 135a	304n27
bPes 8b	172	bShab 139a	32n35, 37n54, 40, 172
bPes 49b	171n118		
bPes 57a	546n65	bShab 153a	246n47
bPes 66a	4n12	bShevu 46a	37n49, 37n53
bPes 70a	439n131	bShevu 48a	37n56
bPes 71a	439n131	bShevu 48b	30n23
bPes 74b	546n66	bSot 22a	172n126
bPes 94b	171n118, 333n104	bSot 41a–b	546n66
bPes 107b	546n66	bSot 49b	531n138, 660n190
bPes 113b	171n118	bSuk 35a	50n45
bRH 4a	163n79	bSuk 43b	51n46, 527n119
bRH 19a	163n78, 171n119	bSuk 48a	50n45
bRH 19b	494n139	bSuk 48b	527n119, 613n58
bRH 20a	38n61	bTaan 11a	492n133

bTaan 18a	163n78, 171n119	Mekhilta de-Rabbi Yishmael	
bTaan 21a	171n122		303, 305–307,
bTaan 23a	650n138		305n30, 307n37,
bTaan 29b	29n21		312
bTam 27b	494n139	MekRY bahodesh/yitro	
bTem 14a–b	30n25, 35n44	(p232f)	62n102
bYev 20a	492n133	MekRY beshallah 1	
bYev 46b	29n21	(p156)	595n70
bYev 48b	29n20	MekRY beshallah	
bYev 58a	29n21	shira 3 (p127)	249n60, 252n64
bYev 62b	171n118	MekRY beshallah	
bYev 63a	171n118	shira 4	491n127
bYev 63b	171n118	MekRY beshallah	
bYev 76b–78b	449n165	shira 6 (p137)	492n128
bYev 104b	37n55	MekRY beshallah/	
bYev 112b	171n119	vayehi 6 (p114f)	357n37
bYev 114a	611n48	MekRY beshallah/	
bYev 122a	168n105, 171n119	vayehi (p115)	240n23
bYom 9b	289n45	MekRY bo/pisha 1	
bYom 19b	51n47	(p3)	116n51
bYom 20b	546n66	MekRY bo/pisha 7	
bYom 69a	163n78, 171n119, 171n121, 494n139	(p22)	239n21, 258n23
		MekRY bo/pisha 7	
bYom 85 a–b	304n24, 307n37	(p25)	239n21, 258n23
bYom 85b	304n23, 305n32	MekRY bo/pisha 14	
		(p51f)	240n23
<i>Halakhic Midrashim</i>	264n7, 589n44, 590n46	MekRY bo/pisha 14	
		(p52)	596n73
		MekRY (p161)	270n46
MekRS 12.1 (p7)	116n51	MekRY mishpatim 1	
MerRS (p58)	588n37	(p247)	150n30
MekRS 14.15	491n127	MekRY mishpatim 8	
MekRS 14.31 (p70)	240n23	(p276)	60n93
MekRS 15.1 (p70)	357n37	MekRY mishpatim 8	
MekRS 15.1 (p71f)	236n4	(p276)	61n99
MekRS 15.2 (p79)	249n60	MekRY mishpatim 19	
MekRS (p106)	270n46	(p318)	611n48
MekRS 19.6 (p139)	491	MekRY mishpatim/	
MekRS 20.8 (p148)	289n50, 606n19, 616n69	nezikin 18 (p312)	169n109a
		MekRY mishpatim	
		kaspa 20 (p320)	491
MekRS (p148)	13n25, 20n53, 377n130	MekRY pisha 1 (p4)	589n45
MekRS Ex 20:9		MekRY pisha 17 (p64)	589n45
(p149)	345n178	MekRY shira/	
MekRS (p149)	14n28, 20n53	beshallah 1 (116f)	236n4
MekRS (p158f)	406n56	MekRY shira 2 (p125)	492n128
		MekRY ki tissa 1	
		(340f)	304n24, 305n32

MekRY ki tissa (341)	497n146	SifDeut 269 (p288)	54n59, 86n70, 88n75, 92n90, 388n23, 594n66
MekRY vayehi beshallah 3 (p99)	588n37		
MekRY yitro 2 (p205)	429n82	SifDeut 269 (p289)	86n68, 93n99, 167n97
MekRY yitro 7 (p229)	13n25, 20n53, 377n130, 606n19, 616n69	SifDeut 294 (p313)	13n25
		SifDeut 305 (p325)	150n30
MekRY yitro/ bahodesh 1 (p203)	150n30	SifDeut 306 (p328)	589n44
MekRY yitro/ bahodesh 5 (p220)	653n157	SifDeut 336 (end p386)	58n84
MekRY yitro/ bahodesh 7 (p229)	289n50	SifDeut 343 (p399)	249n60
		SifDeut 406 (p330)	88n77
		SifDeut 444 (p401)	531n139
		SifDeut 451 (p408)	531n139
MidrTann Deut 14:21 (p75)	492n133	Sifrei Zuta Deuteronomy	
MidrTann (p175f)	47n29		89, 90, 90n83, 91n86, 92n91
MidrTann 18:11	122n76		
MidrTann 26:23 (p176)	583n13	SifZDeut 24:1 (lines 10–13)	89n79
MidrTann 176	38n61, 148n22		
MidrTann metsora 26a	430n83	Sifra	589n45
		Sifra kedoshim 1.1	491n127
SifNum 104 (p82f)	240n23	Sifra kodashim 2.4 (Weiss 89b)	91n89
SifNum 115 (p125)	239n21, 258n23	Sifra kodashim (kedoshim) 8 (91a)	366n87, 611n46
SifNum 117 (p137)	33n39	Sifra metsora, perek 6 (77b)	127n105
SifNum 130 (p170f)	171n121	Sifra metsora 9 (79c)	90n83, 91n89
SifNum 131 (p171)	169n109, 171n119	Sifra, shemini 54b	125n90
SifNum 161 (p222f)	240n23		
SifNum neso 16 (p21)	653n158	<i>Aggadic Midrashim</i>	188, 588n40, 589n44, 590n46
SifZNum 6.8 (p242)	492n132		
SifZNum 12 (p276)	589n44		
SifZNum 27:11 (p318)	590n46		
SifDeut 32 (p55)	496n145	Genesis (Bereshit) Rabba	170
SifDeut 39 (p79)	128n106		
SifDeut 48 (p110)	496n144	BerR 10.3 (p75)	660n192
SifDeut ekev 49 (p114f)	487n104	BerR 28.3 (p261)	660n192
SifDeut 51 (p116–118)	113n36	BerR 78.1 (p916v)	660n192
SifDeut 157 (p209)	546n66	GenR 10.7 (p82)	170n112
SifDeut 173 (p220)	122n76	GenR 11.4	170n112
SifDeut 218 (p364)	169n109	GenR 11.5 (p94)	146n13, 170n112
SifDeut 244 (p401)	169n109	GenR 18.5 (p166f)	68n2
SifDeut 253 (p421)	171n119	GenR (Vilna) 33.3	5n17
SifDeut 254 (p416)	169n109, 171n122	GenR 63.7 (p686)	170n112, 173n129
SifDeut 255 (p421)	169n109	GenR 63.8 (p689)	170n112, 172n124
		GenR 64.9 (p711)	5n16

GenR 76.8 (p906)	170n116	KohR 1.3	632n49
GenR 93.7 (p1178)	170n112	KohR 1.8	657n175
GenR 96 (p1218)	170n113, 170n115	KohR 3.7	633n55
GenR 98.6 (p1257)	170n113, 170n114	KohR 9.1	494n140, 495
		KohR 9.8	246n47
Exodus (Shemot) Rabba		KohR 11.2 (51b)	333n104
	494		
ShemR 21.8	494n140	EstR	156n53
ExodR 21.8	495	EsthR 1.11 (89b)	333n104
ExodR 23.6	357n37	EstR petishta 5	5n16
ExodR 28.2	430n83	EstR 6.4	171n120
		EstR 7.11 (Warsaw ed.)	
Leviticus Rabba	170, 196		156n53
LevR 1.3 (p8)	170n113	EstR 7.13	155n50
LevR 2.11 (p52)	243n35		
LevR 3.7 (p73)	249n60	Pesikta (de-Rav Kahana)	
LevR 13.4 (p281)	196n37		
LevR 13.5 (p294)	170n112, 171n121		242, 247, 251
LevR 18.1 (p394)	660n192	PesRK	239, 239n19
LevR 22.4 (p506)	170n112	PesRK 1.1–3 (p1–6)	238n17
LevR 22.4 (p511)	115n48	PesRK 4 (74)	15n35
LevR 25.5 (p578)	127n105	PesRK 4.7 (p74)	133n135
LevR 34.2	335n114	PesRK Para (p75)	171n121
LevR 34.3 (p775–777)	257n17	PesRK 5.6–9 (p87–98)	238n17
LevR 34.3 (p776)	427n66	PesRK 5.6 (p86)	239n18
LevR 35.6 (p824)	196n37	PesRK 5.6 (p87f)	260n25
LevR 37.2 (p858f)	170n112	PesRK 5.9 (p96f)	239n18
NumR 8.2	169n109a	PesR 23 (115b)	13n25, 20n53,
NumR balak 20.21	170n116		289n50,
			377n130
Song (Canticles/Shir) Rabba		PesR nahamu (140a)	150n30
	238–240, 238n14,	PesR 44 (184a)	88n77
	242, 250, 251, 258		
ShirR 1.17	14n27	Tanh vayikra 2 (1b)	611n46
ShirR 1.22	249n60	Tanh beshallah 10	
ShirR 7.3	239n20	(86b)	236n4
ShirR 7.14	243n35	Tanh Toledot 7	494
		Tanh ki tissa 16	
RuthR 3.2	660n192	(122a)	365n77
RuthR 3.14	425n57	Tanh yitro 8 (95a)	304n24, 305n32
LamR 1.51	170n116	TanB vayikra 3 (2a)	611n46
Lam(Ekh)R 2.4	511n48	TanB metsora 18	
LamR 3.8	660n192	(27a)	430n83
		TanB 8 (91a)	304n23
Kohelet Rabba	494, 494n138,	TanB vayashev 8 (91a)	304n24, 305n32
	635n62	TanB wayehi 12 (110a)	170n115

MidrTeh 16.2	494	Avot de-R. Natan	616n71
MidrProv 22.20	367n90	ARN a	618n77
		ARN a 8 (ms Vat 44 app. B fol 82a)	493n135
<i>Other Rabbinic Works</i>		ARN a 11 (23a)	345n178
Megillat Taanit	13n25, 162, 162n73, 163, 163n80, 174, 175, 200, 289n50, 377n130, 527, 527n118	ARN a 12–15 (24b–31a)	616n73
		ARN a 12–13	138n160
		ARB a 12 (26a)	343n169
		ARN a 15 (p61)	22n2
		ARN a 17 (p65)	150n30
Scholion on MegTaan	289n50, 377n130	ARN a 26 (p82)	168n107
MegTaan 4/10		ARN a 32 (35b–36a)	616n71
Tammuz	546n65	ARN a 36 (54a)	12n22, 169n109a
MegTaan 8 Nisan		ARN a 40 (65a)	616n74
p324 (Lichtenstein)	49n37, 50n39	ARN a 41 (p131)	177n137
MegTaan 4 Tammuz,	p331 57n73	ARN b	618n77
MegTaan p340	171n119	ARN b 21 (22b–23a)	345n178
MegTaan p350	171n119	ARN b 21 (22b–23b)	345n178
MegTaan p351	13n25	ARN b 21 (22b)	345n178
		ARN b 23–24 (24a–b)	138n160, 616n73
Targumim			
FrgTg Gen 49:8	170n115	ARN b 29–30	
TgIsa 42:21	367n90	(30a–32b)	616n73
TgOnk Gen 40:13	5n17	ARN b 29 (31a–b)	393n2
TgOnk Gen 49:11	367n90	ARN b 29 (p61)	22n2
TgPsYon	170n115	ARN b 30 (p66)	257n17
TgPsYon Exod 19:3	430n84	ARN b 31 (p67)	260n25
TgSong	236n4, 240, 243n34	ARN b 34 (25a)	343n169
	249n60	ARN b 44 (p124)	493
TgSong 1.3	249n60	ARN b 46 (64b)	616n74
Targum Yonatan	596		
TgYon Mal 2:16	79n37	Midr Yelamdenu bereshit no. 131	494n137
Seder Eliahu Rabba	243n35, 292n60		
SER p51	264n6	Midrash Gadol	635n62
SER 18, p105	169n109a	MidrGad Exod 19:3 (p477)	430n83
Gerim 4:5	169n109a	MidrGad Exod 20:10 (p415)	20n53
Kalla R 5.1	289n45	MidrGad Exod 32:16 (p668)	365n77
Semakhot 8.10	254n7	MidrGad Deut 18:11 (p422)	122n76
Derekh Erets treatises	611n48	MidrGad Deut 23:15 (p523)	86n70, 594n66
Midrash Zuta 1.1	236n4	MidrGad Deut 23:19 (p528)	632n49, 634n57
Pitron Tora (p247)	367n90		
Seder Olam 3	427n70		

MidrGad Deut 24:1 (p436f)	86n70, 594n66	Greek and Latin Authors	
MidrGad Deut 26:13 (p597f)	33n38, 47n29, 148n22	<i>Aristophanes</i>	
MidrGad Deut 26:13 (p598)	38n61	Equites 643	224n4
		647	224n4
		656	224n4
		Frogs 1198ff	332
Yalkut Shimoni	635n62	<i>Berosus, Babyloniaca</i>	
YalShim Exod no. 349	169n109a		604
YalShim Isa no. 459	169n109a	<i>Cassius Dio, Historia Romana</i>	
YalShim Micah no. 551	632n49	12.1–2	509n41
		37.16.6f	210
Otsar Hamidrashim (p214)	367n90	66.7.2	477n67
Otsar Hamidrashim (p450)	367n90	66.15	543n45
		66.15.3	543n46
		68.1.2	557n116
Rav Sherira's Letter	582n7	<i>Cicero, pro Flacco</i>	
Rav Sherira's Second Letter	529n132	67	628n30
Maimonides		<i>Dio Chrysostom, Euboicus</i>	
Mishne Tora	6n21		345n180
hil. Berakhot 6	130n118	<i>Euripides, Bacch</i>	
hil. Hamets u-Matsa 2:5	172n127, 173n130	45.325.1255	617n75
hil. Keriat Shema 3	130n118	<i>Herodotus, History</i>	
hil. Keriat Shema 4:8	117n57, 130n117	1.1	210
hil. Tefilla 4	130n118	6.130	165n89
Mishna Comm		7.60	191n19
Kel 2:8	256n14	<i>Homer</i>	
<i>Rabbinic Prayers and Liturgy</i>		<i>Odyssea</i>	
Eighteen Benedictions	261, 2686	2.261	111n19, 111n20
	270–276, 290,	12.336	111n19
	527–529, 531	14.152	223n3
Pesah Seder	290	14.166	223n3
Shema	116–119, 126,	17.48	112n26
	130, 130n117,	17.59	112n26
	130n118, 244,	Ilias	
	269n38, 320n21,	16.227–229	111n19
	431n89	24.302–306	111n19
Tefilla	118, 119, 130n118,	<i>Isaios, De Pyrrho</i>	
	268, 269n38	70	165n89

<i>Julius Caesar</i> , Gallic War		<i>Suetonius</i> , De vita Caesarum	
	564n25	Claudius 25.4	217n122
		Nero 16.2	628n30
<i>Juvenal</i> , Satires		Titus	
6.156	543n45	7	543n45
		7.1	543n46
<i>Manetho</i> , Aegyptiaca		Domitian 12.2	477n67
	604		
		<i>Tacitus</i>	
<i>Pliny the Elder</i>		Annals	559, 626
Naturalis historia		13.32.2	628n30
5.73	436n116, 437n119	15.38	626
		15.42f	626
<i>Pliny the Younger</i>		15.44	289n43, 626, 627n26
Epistulae		15.44.1	626
10	629	15.44.2–5	552n93
10.96–97	628	15.44.2	626
10.96	629–630	15.44.3	627
10.97	630	15.44.4	627
10.96	631n47	15.44.5	627
10.96.5	633n54	Histories	559
10.96.8	628n30	2.1.1	543n45
		5.1.2	544n57
<i>Plutarch</i>		5.5	627n23
Moralia		5.5.1	628n31
484D	339n138	5.8.2	628n30
488D–f	339n138	5.9–10	289n43
485A	339n138, 339n141	5.9	571n41
487B	339n141	5.9.2	571n41
491C	339n141	5.12.3	13n**
On Brotherly Love		<i>Thucydides</i>	
	329, 337, 339	History	559, 560
Vita Antonii		1.2–20	562n13
61.3	146n13	1.3	562n13
71.1	146n13	1.20f	562n13
Vita Fabii Maximi		1.22	561n12
13.6f	323n38	1.89–117	562n13
Vita Sertorii		1.118.2	560n7
11.8	224n4	118.2	562n13
26.6	224n4		
		<i>Ulpian</i> , Digesta	
<i>Quintilian</i> , Institutio oratoria		50.2.3.3	628n30
3.7.21	628n30		
4.1.19	543n48		
		<i>Xenophon</i> , Hellenica	
<i>Seneca</i>		1.6.37	224n4
De Provid 2	338n133	4.3.14	224n4

Index of Names

Ancient Names

- Aaron 136, 339, 484, 485, 491, 595
Abba, R. 35
Abba bar Yirmiya, R. 130
Abbahu, R. 29n20
Abba Shaul 49n36, 118, 518n80
Abba Shaul ben Botnit 518n80
Abba Yose ben Yohanan (the Jerusalemite) 518n80
Abraham 89, 149n25, 149n28, 159, 179, 185, 299n8, 300, 304, 312, 327n71, 333n106, 343, 357, 362, 366–368, 432, 432n94, 437n124, 455, 470, 587–589, 597
Absalom 224n8
Arsacid empire 196
Achaeminid empire 121n71, 196
Achior the Ammonite 155
Adam 317, 345, 384, 489, 490
Aelius 332n100
Agrippa I 159n65, 160n68, 376, 377, 543, 545, 546
Agrippa II 536, 536n13, 538, 541–556, 541n39, 542n40, 542n43, 543n45, 543n46, 544n51, 544n55, 545n59, 545n61, 547n68, 555n106, 571, 576, 584
Aha, R. 68n2, 196n37, 305, 306
Akiva, R. 9n6, 10, 17–19, 17n43, 18n45, 23, 25n13, 86–92, 88n73, 91n86, 91n89, 101, 122n76, 125n90, 126, 127, 127n100, 196n37, 235, 236, 236n5, 238, 240, 240n23, 249n60, 250–252, 256n16, 258n22, 271–273, 275, 303–307, 304n24, 305n30, 307n37, 312, 345n178, 406, 427n66, 432n94, 439n131, 493, 502n3, 511n48, 518n80, 527, 529, 529n131, 582n6, 589n44, 616n69, 616n74, 633, 634n60, 652n149, 653–655, 654n163
Albinus 546, 564, 564n27
Alexander coppersmith 359
Alexander the Great 163, 163n79, 171, 192, 254, 418n31, 540n35
Alexander Jannaeus 151, 151n34, 151n34a, 537
Alexander (upper priest) 609
Alexander Polyhistor 204, 204n75
Alexandra-Salome 537
Ammi son of R. Hiya bar Abba, R. 30, 37, 38n61
Ammi bar Natan, R. 37
Ammonius 576n67
Amram (ben Sheshna), Rav 39, 39n65
Anan, Rav 37
Ananias 545, 545n62, 552
Ananias (Jewish merchant) 576, 577
Ananus (Annas) 546, 546n65, 609
Ananus son of Ananus 545n62, 546, 546n65
Andrew 230
Andronikos 373n116
Aninana, R. 492
Antigonos from Socho 257n17
Antiochos 418n31
Antiochus IV Epiphanes 162, 162n81, 359n47, 562, 575
Antipater 146n13
Antistios 332n100
Aphrodite 111
Apion 63, 658, 659
Apollonius Molon 63
Apollonius of Tyana 484
Apollos 359, 461
Aquila 320n19, 373n116, 450, 450n168

- Ariamenes 339
 Archelaus 563, 565
 Aristea 150n31, 156, 204
 Aristides 252n65, 530n135
 Aristobulus 160n68, 576, 577
 Ariston of Pella 510n44
 Aristotle 210, 213, 213n106, 347
 Artapanos 200, 204, 204n75
 Artaxerxes 146n15
 Athanasius 362n63
 Avtalyon 124n83, 588
 Augustine 181n158, 347–350, 349n8,
 369n96, 369n97, 372n113
 Augustus (Oktavian) 39, 224n12,
 506n23, 553, 563, 625n17
 Azarya, R. 239
 Azariah 156n53
- Baba Rabba 115n49
 Ba bar Kahana, R. 58n84
 Babata 166, 167, 168n103
 Bar Kokhba/Kosiba, Shimon (see also
 Subject index) 32, 93n99, 511n48
 Bar Kappara 431n90
 Bannus 229
 Barnabas 286, 344n173, 371, 375, 376,
 397, 466, 467n37, 468, 469n41, 477,
 479, 480, 509, 509n35, 567–570
 Bar Kappara 320n18
 Bartimaeus 518n82
 Basilus 362n63
 Bea, Cardinal 185n165
 Benjamin 421
 Ben Sira 333n108, 358
 Berekhya, R. 239
 Bernice (Berenice) 542–545, 542n42,
 542n43, 543n45–48, 544n54, 545n59,
 545n61, 548, 550–555, 550n85, 571, 584
 Beza 102n123, 319n15, 610n44
 Boethus (dynasty of) 24n10, 42, 42n7,
 49, 49n37, 49n38, 50n39, 50n45, 51,
 51n46, 51n47, 55, 56, 527, 527n119,
 613n58
- Caiaphas 546, 546n65, 609
 Cain 590
 Cassius Dio 210, 509, 510n42, 511,
 511n45
- Celsus 634
 Cestius Gallus 562, 564
 Chairemon 63
 Choirilos 191n20
 Chloe 26, 450
 Cicero 329n80
 Claudius 216, 217, 379n139, 381,
 381n148, 397, 545, 570, 627, 627n24
 Claudius Charax 149n28
 Clearchus 210
 Clement 476n63
 Clement of Alexandria 111, 112, 133,
 204, 408, 408n60, 509, 509n35
 Clement of Rome 328, 328n75, 337n130
 Cornelius 146n15, 168n105, 180n152,
 549
 Constantine 506n23, 625n17, 657, 661
 Coponius 563, 565
 Cumanus 216, 572, 573
 Cyrus 147, 190, 190n17, 203, 378n134,
 606n17
- Daniel 407, 484, 490
 Darius 339
 David 95, 97, 136, 147, 239, 288n40,
 389n31, 413, 440, 443, 490, 537, 591
 Demetrios 198, 418n31
 Demetrios II 199, 201
 Didymus the Blind 384n9
 Dimi, R. 30
 Dio Chrysostom 436n117
 Dionysios of Halycarnassus 535,
 563n17
 Dioscuri 339, 340n150, 343, 343n172
 Domitian 290, 529, 535, 541, 541n39,
 552, 552n94, 556, 556n109, 557,
 557n116, 626, 630n39
 Drusilla 543, 571
- Elai, R. 29n20, 29n21, 127
 Elazar, R. 18n47, 29n20, 38n61, 87,
 270n46, 648n126
 Elazar ben Arakh 245, 406
 Elazar (Lazar) ben Azaria, R. 303–305,
 304n24, 305n32, 307n37, 310, 312,
 363n65, 428n77
 Elazar ben Dama, R. 633, 633n55, 634,
 634n59, 638

- Elazar ben Hanina/Hananya ben Hizkia ben Garon 13, 13n25, 20n53, 53n56, 162n77, 289, 377, 428, 606, 616n69
- Eleazar (son of high-priest Ananias) 13, 13n25, 289, 377, 428, 474, 574, 576
- Eleazar the high priest 204
- Eleazar from Galilee 576, 577
- Elijah 427n69, 490, 490n119, 490n121, 493
- Eliezer (ben Hyrcanus), R. (see also Index of subjects, Shammaite) 4, 10–12, 12n22, 14n28, 14n31, 16n37, 17–19, 17n39, 17n41, 17n42, 18n44, 18n47, 19n52, 52, 52n54, 53, 86, 93, 118, 122n76, 127, 167n97, 239, 246, 246n47, 249n59, 251, 258, 259, 270, 270n46, 271–273, 275, 275n60, 276n66, 284n21, 304n24, 305, 305n32, 306, 310, 320n19, 345, 377, 377n131, 389n26, 389n27, 427, 428, 428n73, 492, 527, 527n117, 528n128, 529, 532n142, 592, 592n54, 596n73, 601n91, 606n20, 616, 632n50, 633, 634, 634n60, 635n62, 635n63, 649, 654n163, 656, 657
- Eliezer ben Hanokh 126n94
- Eliezer ben Yaakov, R. 49n36
- Elisha 484, 490
- Enoch 327n71, 484, 489, 490
- Ephraim 439
- Epictetus 147n19, 589
- Epiphanius 362n63, 523, 634, 634n58, 650
- Esther 146, 154, 155
- Eupolemos 200, 204, 204n75
- Euripides 617n75
- Eusebius 57, 64, 64n113, 200, 204, 281, 281n7, 282, 362n63, 496, 506n22, 509n41, 510, 510n44, 511, 511n46, 513
- Evagrius 362n63
- Ezekiel 147
- Ezra 112, 121n71, 129, 130, 146, 190n17, 191, 198
- Fadus 545, 572
- Felix 103, 289, 377, 474n57, 479, 543, 543n44, 545, 547n68, 550, 550n85, 552, 570–574
- Festus 546–548, 550–552, 550n85, 570, 573, 584
- Flavia Domitilla 556n109
- Flavians 605
- Florus 543, 544, 564, 565
- Gaius (Caligula) 146n15, 159n65, 160n68, 163n80, 340n150, 451n174
- Galen 398
- Gamaliel (Gamliel) the Elder, R. 18n44, 38–40, 38n61, 42n6, 47, 47n29, 53n56, 148, 266n20, 290, 293, 426n66, 426n67, 548n73, 549, 551, 553–556, 554n101, 572n49, 583, 584, 584n20, 586, 598, 598n75, 599, 603, 603n1, 603n3, 603n4, 604, 606, 609–612, 612n52, 614–619, 615n65, 656, 656n171
- Gamaliel (Gamliel) the Younger, R. 47, 57n67, 104, 111, 117, 120, 188n6, 199n52, 269–276, 272n53, 273n58, 290, 293, 295, 302, 428, 428n77, 527–532, 528n125, 528n127, 531n137, 531n138, 535–537, 535n10, 536n13, 539, 555–557, 556n110, 582, 583, 583n13, 605, 606n16, 616, 619n79, 623, 642, 649–651, 650n141, 656, 658–660
- Gershon, Rabbenu 30n26
- Hadrian 163n78, 163n81, 190n17, 261, 306, 378n134, 494, 495, 509–511, 510n42, 511n51, 513, 530, 530n135, 606n17, 631n45, 660
- Hai Gaon, Rav 166, 166n92
- Hananiah 156n53
- Hananya 289
- Hananya ben Hakinai 406
- Hanin, R. 68n2
- Hananya/Hanina ben Hizkia ben Garon 11, 13
- Hanina, R. 29n21, 49, 118n60
- Hanina ben Dosa, R. 363n65
- Hanania (nephew of R. YOSHUA) 492
- Hasmoneans (dynasty, period) 47n*, 48, 151, 151n34a, 152, 152n36a, 154, 155, 162, 174, 175, 188n174, 193, 199–201, 204–208, 210, 211, 211n101, 211n102, 258n22, 289n50, 543, 544, 577

- Hegesippus 118n60, 229n40, 634n58
 Helena, queen of Adiabene 478n69, 576, 576n68
 Herod the Great 146n13, 238, 288n41, 339, 381, 542n40, 543, 553
 Herod Antipas 547, 549, 553, 608
 Herodians, Herodian dynasty 302, 538, 540–542, 542n40, 542n43, 543n44, 545, 545n61, 547, 553, 555n106, 556n111, 563, 577
 Herodion 373n116
 Herodotus 191, 207, 210, 535, 562, 562n15, 563, 563n17, 604n9
 Hillel the Elder (see also subject index) 4n12, 11–13, 11n17, 12n23, 17, 17n40, 17n42, 18, 18n44, 20, 20n54, 22, 25, 38, 38n63, 42, 53–56, 55n68, 67n1, 69, 70, 75, 79n39, 82, 82n52, 82n54, 85, 86, 88–92, 91n89, 99–101, 104, 110, 124n83, 125, 127, 128, 135, 136, 138, 138n160, 163n82, 165, 209n265, 256, 257n17, 270, 284, 285, 285n24, 289, 290, 292, 293, 319, 335n114, 345n179, 377, 388, 389, 393, 425–428, 427n66, 427n67, 427n71, 428n77, 449, 520, 529, 530, 537, 606, 613, 613n58, 614, 614n60, 616–619, 616n69, 616n71, 616n73
 Hippocrates 345
 Hippolytus of Rome 237, 237n9, 243n35, 249, 250, 251
 Hiya bar Abba, R. 239
 Hiya the Elder, R. 31, 32, 37n54
 Hizkia, R. 13n25, 30
 Homer 16n38, 111, 223, 561, 599n83
 Huna, Rav 37, 124n85, 129
 Huna the Great from Sepphoris, R. 68n2
 Hyrcanus, king 576, 577
 Ibn Ezra 77n25
 Ignatius 294, 295, 330n84, 508, 530n135, 618
 Irenaeus 285n25, 320n18, 508, 548, 618, 661, 661n193
 Isaac 432n94
 Isaiah 423, 638, 639
 Izates, king of Adiabene 576
 Isi b. Yehuda 491
 Ishmael son of Phiabi 545n62
 Issi the Priest, R. 492n130
 Jacob 147, 169, 196n37, 252n67, 374, 421, 429, 430, 430n84, 430n86, 432n94, 471, 511n48
 James (brother of Jesus) 42n8, 103, 262n2, 364, 371, 375, 376, 378, 397, 408, 465n32, 466, 475, 479, 482, 491, 546, 555, 568–570
 James (son of Judas) 564n23, 565, 572
 Japheth 320
 Jason 373n116
 Jason of Cyrene 204, 210n267
 Jeremiah 145, 342
 Jerome 226, 258n51, 650, 657
 Jesus (Christ) (see also Yesu) 4n7, 6n20, 11n12, 16, 17, 17n39, 25–27, 51n50, 53, 67–71, 68n3, 69n6, 71n13, 73–76, 79n40, 84n62, 84n64, 90, 94–101, 98n114, 98n115, 100n119, 103–105, 109, 122n77, 125, 125n89, 126n94, 127n103, 130–132, 131n120, 131n124, 133n133–135, 134, 135, 135n146, 137, 138, 176–179, 179n144, 180n149, 182, 184, 214, 215, 217–220, 218n125, **223–314**, 317, 322n33, 325, 325n53, 326n60, 326n61, 331, 331n91, 344, 344n175, 348–350, 348n6, 351n20, 352, 358, 364n70, 369n98, 371, 373, 374, 378n137, 379, 383, 383n1, 385–387, 387n17, 387n18, 389–391, 389n25, 389n30, 390n34, 394–396, 398–405, 399n30, 400n33, 400n34, 401n36, 401n38, 403n45, 404n49, 405, 405n50, 407–412, 407n58, 408n60, 409n66, 414, 414n11, 415, 415n16, 424, 425, 425n57, 425n58, 426n63, 432, 432n94, 433, 433n100, 441, 445–447, 447n156, 452, 454, 455, 466, 469, 473, 474n58, 482, 483n85, 486, 488n114, 488n115, 489–491, 489n118, 493, 493n136, 494n139, 496n144, 497, 503, 503n8, 504n13, 507, 513–521, 516n73, 516n75, 518n80, 518n82, 519n87, 523, 523n109, 523n110, 524, 526, 528, 531, 532, 546–549, 549n82, 551, 553–556, 567–569, 573–575,

- 573n56, 574n58, 574n60, 575n64,
579, 582, 582n3, 582n8, 584, 586, 588,
590, 590n48, 594, 594n62, 597, 598,
600n88, 601n91, 603n4, 607–610,
607n22–24, 607n26, 608n34, 610n43,
612, 613, 615, 621–624, 624n11, 627,
629, 630, 632n50, 633n53, 634–641,
634n56, 634n58, 634n59, 635n63,
635n66, 638n78, 639n83, 645, 646,
651, 652, 653n160, 655–657, 655n168,
657n176
- Jesus son of Damnaeus 545n62
Jesus son of Gamaliel 545n62
Joanna 432n98
Joazar (son of Boethus) 574n58
John (disciple) 103, 466, 491
John of Patmos 250, 251
John (the Baptist) 131, 131n124, 132,
137, 178, 223, 225–232, 229n43,
229n46, 230n51, 232n58, 244,
244n39, 245, 250, 262, 266, 268,
268n30, 271, 271n49, 277, 490,
490n121, 518, 518n82, 523n109,
524, 528, 574, 574n60, 575, 575n64,
582n8
- John Chrysostom 134, 280n4, 362n63
John (high priest) 609
Jonathan (high priest) 573
Joseph 149n25, 157, 339, 340, 471
Joseph (father of Jesus) 634
Joseph from Arimathea 610
Joseph Kabi son of Simon 545n62
Josephus 13, 16n38, 23, 24, **41–66**, 71,
74, 76, 79n39, 83, 83n58, 83n59, 87,
103, 104, 108, 109n9, 112, 112n25,
114, 115, 144, 145, 146n15, 147n19,
158, 160, 160n67, 160n68, 160n71,
161, 175, 179n148, 187, 188, 194,
200, 202, 203, 203n73, 207, 208, 211,
213, 214n111, 215–217, 223n3, 224,
224n7, 229, 229n43, 254n3, 266, 272,
272n52, 286n29, 288, 289, 290n53,
319, 321n29, 339–344, 340n145,
343n171, 376–378, 378n134,
382n151, 417, 420, 428, 436, 437,
437n120, 440, 474, **533–546**, 548,
550, 550n85, 552, 554–557, 554n103,
555n104, 555n106, 556n110,
- 559–566**, 571–578, 571n42, 572n43,
574n57, 575n67, 576n68, 577n73a,
581–584, 581n2, 583n15–17, 584n20,
586, 598, 600, 604–606, 604n9,
605n12, 606n17, 606n18, 606n20,
606n21, 607n23, 609, 611n46,
612–615, 613n55, 613n59, 614n61,
615n65, 618, 628, 644, 644n106, 650,
656, 658, 659, 659n185
- Joshua 341, 572
Judah 362, 422
Judas Iscariot 248, 268, 308n39,
344n175, 414n11, 518, 518n82, 610
Judas the Galilean 216, 378n138,
563–565, 564n23, 565n28, 565n30,
572, 572n47, 606n18, 615n65
Judith 155
Junia(s) 373n116, 450
Justin Martyr 112, 282, 618, 651,
651n145, 661
Justus of Tiberias 536, 536n13, 536n14,
541, 542, 542n40, 544, 545, 554,
555n106
Juvenal 543n45
- Kahana, Rav 29n21
- Laban 252n67
Lazarus 638
Leah 252n67
Leo the Great, Pope 458
Levi 422
Levi, R. 32
Levi bar Hayta, R. 320n21
Levi the Netmaker 303
Linus 552n93
Lucius 373n116
Lucullus 339
Luke 69, 95n106, 177, 179, 180n152,
184, 185, 217, 226, 230, 266, 271, 277,
286, 295n82, 313, 325, 376, 450n166,
476–480, 479n75, 480n78, 487n106,
517, 518, 524, **533–557**, 554n102,
554n103, 564n22, 570n40, 572n43,
574n58, 598, **603–619**
- Lydia 450n168
Lysias 162n75
Lysimachus 63

- Maccabees 146n15, 162, 163n79, 206,
 229n39, 381, 577
 Maimonides 6, 130, 173
 Malachi 79n40, 100, 101
 Malalas 216
 Manasseh 422, 423
 Manetho 63
 Marcion 233n60, 619n80
 Marcus Alexander 108n5
 Marcus (bishop of Aelia) 510
 Mariamne 543
 Mark 69, 232, 251, 277, 285n25, 285n27,
 287, 407
 Martha (sister of Mary) 432, 433, 638
 Mary (mother of Jesus) 225, 249, 432,
 634
 Mary of Bethany 237n10, 248, 249, 308,
 432, 432n95, 433, 638
 Mary of James 432n98
 Mary Magdalene 432, 432n98, 433,
 433n101, 518n82
 Mar Zutra 35
 Mattathias 362, 575
 Matthias son of Theophilus 545n62
 Mattityah Antigonus 151n34
 Maximus Conf. 362n63
 Meir, R. 10, 17n42, 18n45, 35n44,
 83n56, 87–90, 88n72–74, 88n77,
 89n79, 89n80, 92, 101, 118, 126–128,
 136, 136n49, 274n59, 426, 427,
 427n66, 492, 494, 496, 647, 650n140,
 652n149
 Meiri, R. Menahem 257n17, 335n114
 Menahem (son of Judas) 572, 576
 Menasya, Rav 32
 Metilius 577
 Mishael 156n53
 Miriam 47, 157, 236
 Mohammed (Muhammad) 540n35
 Monbaz, Monobazos 355, 576n68
 Mordecai 146, 154, 155, 155n50, 192
 Moses 4n12, 41n1, 43n13, 47, 63, 69,
 96, 97, 100, 101, 103, 105, 111–113,
 136, 147, 164, 166, 166n91, 166n95,
 169n109, 195n206, 197n41, 204, 235,
 236, 299, 301, 302, 309–312, 318n8,
 319, 320n18, 325, 340, 341, 358, 372,
 376, 383n1, 389n31, 398, 419, 429–
 431, 442, 448, 454, 471, 472, 490, 517,
 517n79, 520, 546, 570, 584, 584n19,
 586, 595, 604, 607, 638n78
 Nahman bar Yitshak, Rav 129
 Nahum, R. 492
 Nathan 442
 Nathan, R. 172, 616
 Nathanael 178, 302, 518n82
 Natan, R. 240n23, 303–305, 304n23, 309
 Nehemia, R. 240n23, 365n77
 Nehemiah 144, 146, 190n17, 191, 198,
 203, 213, 215
 Nehonya ben Hakana, R. 272, 273
 Nero 544, 546, 548, 550, 552, 552n93,
 554, 584n18, 626–628, 626n21,
 628n32, 631, 631n46, 657
 Nerva 513, 513n57, 538, 557, 565n29,
 626
 Nicodemus 178, 518n82, 583n13
 Nicolaus (of Damascus) 535n10, 537,
 537n19, 538
 Nicolaus (a proselyte from Antioch)
 610n43
 Nidbai 13n25
 Noah 26, 327n71
 Origen 102n123, 134, 235–238, 236n2,
 236n5–7, 237n9, 240, 249–251,
 249n55, 264, 264n11, 265, 271, 280,
 281, 362n63, 408, 408n60, 473n53,
 509, 518n80, 631n46, 634, 634n58, 657
 Paul (Saul) 22–27, 33, 36, 38, 47,
 53n55–n57, 57n76, 60, 60n90, 67–69,
 71, 71n13, 72, 75, 86, 92–95, 96n108,
 97, 98n112, 98n114, 99–101, 103,
 103n131, 104, 107n1, 108, 111n22,
 123n79, 131–135, 137, 138n159,
 153n44, 160n71, 173n129, 181–185,
 193, 193n27, 208n86, 214–218,
 223n2, 225, 232, 264, 284n22, 286,
 287, 289, 289n48, 290n51, 293–296,
 298n5, 313, **317–497**, 502, 502n2,
 502n3, 504n13, 505, 505n19–n20,
 509, 520, 523n110, 525, 542, 545n63,
 546–555, 566–571, 567n36, 568n38–
 n39, 571n42, 575, 575n62, 577–579,

- 581, 581n1–n2, 583–589, 584n18–21, 585n22, 585n24, 586n26–30, 588n38, 588n39, 589n41–44, 591–601, 591n51, 592n55–n56, 593n57, 593n59, 594n63, 594n65, 599n82, 600n87, 601n92, 603n5, 606n19, 607, 608, 610–612, 616n69, 619, 619n80, 621, 631n46, 645, 646, 646n117, 648n128, 654, 656, 660n188
- Peter (Cephas, Simon –) 103, 103n131, 134, 168n105, 180n152, 212–214, 268, 285n25, 286, 287, 352, 371, 371n105, 375, 396, 397, 404, 407–410, 409n66, 424, 462, 466–468, 482, 483, 491, 502n2, 518n82, 524n113, 554, 567–570, 574n57, 577n73, 584n18, 609, 631n46, 635n65
- Philip 287, 302, 610
- Philip ‘from Bethsaida’ 180n149
- Philo 23, 45, 45n20, 50, 51, 53, 55, 55n64, 58n81, 59, 61, 63, 63n105, 64, 71, 74, 76, 78n31, 79n39, 80n46, 82, 82n55, 83, 83n56, 83n57, 87, 88, 88n73, 111–114, 114n39, 123n79, 136, 144, 150n29, 150n31, 153n46, 158, 159, 159n63, 159n65, 159n66, 160n68, 161, 175, 181n158a, 188, 193, 202, 204, 205, 207, 211, 212, 223n3, 224, 280, 321, 321n25, 321n27, 321n29, 327n71, 335, 336, 340n145, 341–344, 341n154, 343n171, 343n172, 358n43, 365n77, 380n142, 413, 433, 433n102, 433n103, 434, 434n105, 436, 438, 440, 470, 470n46, 540n34, 595, 599n83, 610n45, 613, 613n59
- Phoebe 450
- Phineas 474
- Photius 536, 538, 541, 541n39, 542, 555n106
- Pinhas ben Yair, R. 169n109, 490n122, 493
- Pius XI, Pope 185
- Plato 321n29
- Pliny the Elder 436, 436n117, 626n21
- Pliny the Younger 625, 627n23, 628–631, 628n33, 629n34–36, 630n38, 630n40, 630n41, 631n42, 631n44, 631n45, 634, 641, 656, 657
- Plutarch 150n29, 223n3, 337n130, 339, 339n139, 339n141, 341, 589
- Polycarp 497, 618
- Pompey 52, 359, 577n71
- Pontius Pilate 176, 178, 214, 219, 294, 295, 302, 408, 547, 574n58, 610, 627, 627n24, 641
- Prisca/Priscilla 373n116, 450, 450n166, 450n168
- Ptolemies 150, 156, 197, 198, 198n47, 201, 202, 204–206, 211, 211n102
- Ptolemy I 202n70, 204
- Ptolemy II 41n1
- Ptolemy (historian) 576, 576n67
- Pythagoras 337, 398
- Quadratus 216, 252n65
- Quintilian 543, 550
- Quirinius 216, 553, 553n95, 564, 564n22, 564n25, 565, 574
- Raba bar bar Hana 11n18
- Rabbenu Asher 34n43, 38n59
- Rabin 29, 30, 35, 36
- Rachel 252n67
- Rashi 30n26, 32n34, 38n59, 121n74, 124n87, 306n33
- Rav 31, 32, 37
- Rava 29n19, 34, 35, 171n118
- Rav Hiya son of Rav Huna 29, 29n20
- Rav Menasia 32
- Rav Pappa 34, 35
- Rebecca 661
- Resh Lakish 30
- Rufus 510
- Saddok (a Pharisee) 565
- Salome (Herodian princess) 165n89
- Salome (disciple of Jesus) 432n98
- Samuel 591
- Samuel son of Yedaya, the Archon 153
- Samuel son of Eiddeos 153
- Sarah 333n108
- Sassanid dynasty/empire 196
- Saul 136
- Seleucids (dynasty, era of) 47n*, 199, 201, 205
- Seneca 330n84

- Shemaya 124n83, 588
 Shammai (see also subject index) 11–13, 12n23, 13n25, 17, 17n40, 17n42, 18, 18n44, 20, 20n53, 20n54, 25, 38, 42, 53–56, 53n56, 69, 70, 73–75, 78n34, 81n50, 82n52, 83n57, 83n59, 85–92, 88n74, 89n79, 89n80, 91n89, 98n115, 99–105, 104n134, 110, 124n83, 125, 127, 138, 138n160, 164n86, 270, 284, 284n21, 287, 289, 289n46, 289n50, 290, 292, 319, 377, 377n130, 377n131, 378, 388, 389, 393, 425–427, 427n67, 428n73, 449, 520, 529, 530, 614n60, 616, 616n69, 616n73, 617
- Shem 320
 Shemaia 205
 Sherira (ben Hanina Gaon), Rav 39, 39n65, 92n92, 529, 529n132, 582, 582n7
- Shilo, R. 244
 Shimi bar Ashi 35
 Shimon, R. 10, 16n36
 Shimon ben Elazar 126n94, 168, 169, 175, 177, 239n21, 258n23
 S(h)imon ben Gamaliel the Elder 33, 33n38, 34, 40, 47n29, 363n65, 365, 365n80, 536, 539, 555, 583, 583n13, 586, 606n21, 614
 S(h)imon ben Gamaliel the Younger 320n17, 531n139, 649n135
 Shimon ben Menasya, R. 303–305, 304n23, 307n37, 309, 495–497, 497n146
 Shimon b. Nataneel, R. 273n57, 527n121
 Shimon ben Shetah 77n28
 Shimon ben Yohai, R. 12, 13, 14n27, 25n13, 170, 493
 Shimon ben Pazzi, R. 425n57
 Shimon ha-Pekoli 273, 275, 528
 Shimon the Righteous 163, 171
 Shimon son of Hillel 614n60
 Shimshon from Sens, R. 256n14
 Shimshon me-Shantz, R. 229n40
 Shmuel, R. 31, 32, 35, 37, 37n52, 494n138
 Shmuel bar Nahman, R. 68n2
 Shmuel the Smaller 275, 275n62
 Shunamit 492
- Silas 324, 324n48
 Silvanus 323
 Simeon 549
 Simon Maccabee 199–201
 Simon, the high priest 151, 199
 Simon (son of Judas) 564n23, 565, 572
 Simon the Zealot 575n62
 Solomon 236
 Sosipater/So(si)patros 373n116, 472
 Stephanas/Stephen 464, 479, 490, 575n62, 599, 610
 Suetonius 626n21, 627, 641
 Synesius of Cyrene 436n117
- Tabitha/Dorcas 450n168
 Tacitus 64n110, 559, 561, 571, 571n41, 572n50, 625–628, 626n18–22, 627n23, 627n24, 627n27, 628n29, 628n30, 628n32, 628n33, 630n39, 630n41, 631, 641, 656
 Tarfon, R. 55n67, 338n133, 345, 345n180, 653, 654, 654n165
 Tertullian 101, 280n4, 447n154, 552n93, 629n34, 631n45, 631n46
 Theodoret 362n63
 Theodotus son of Vettenus 114, 114n45, 319n15
 Theophilus 547, 551
 Theudas 572–574, 615
 Thucydides 202, 534, 535, 535n7, 559–564, 560n5, 560n8, 561n9, 561n12, 562n14, 562n115, 564n21, 571, 578, 604n9
 Tiberius 553, 571n41, 627
 Tiberius Alexander 216, 564n23, 565, 572
 Timothy 323, 324, 324n48, 324n49, 472
 Titus (Emperor) 466, 469, 472, 479, 542n43, 543, 543n48, 544, 571
 Titus (Paul's companion) 568, 569
 Trajan 261, 322, 414n11, 511n45, 513, 529, 536, 538, 541, 626, 628–631, 629n34, 630n39, 631n45, 641
 Trypho 112, 661n193
- Vespasian 114n40, 477, 543, 544, 545n58, 562

- Xenophon 191, 321n29
 Xerxes 191n20, 203, 339, 560
 Xiphilinus 510n42
- Yaakov from Kfar Sama 633, 634
 Yaakov from Kfar Sakhnin/Sakhnaya 633, 633n55, 634, 634n60, 656
 Yakov bar Aha, R. 129
 Yannai, R. 34, 35
 Yashia, R. 239n21, 258n23
 Yedoniah 145, 191
 Yehuda (biblical) 170
 Yehuda (Yuda), R. 10, 18n45, 33, 86, 87, 115n48, 118, 126–128, 163, 163n81, 166, 167n98, 272, 273, 345n178, 365n77, 389, 389n26, 601n92, 647
 Yehuda bar Nahmani, R. 30
 Yehuda bar Pazzi 36n45
 Yehuda ben Bateira 33, 34, 36n47, 126, 129, 136
 Yehuda ben Elai 136
 Yehuda ben Teima 439n131
 Yehuda ha-Nasi, R. 10, 164n86, 170, 528n127, 616, 632n48
 Yehuda Nesia, R. 14n27, 38n61, 164n86, 206n79, 616
 Yehuda the Ammonite 211n100, 428, 449
 Yehuda the Prince, R. 31, 32, 34, 169n109, 272, 273n56, 492, 495, 649
 Yehudia 170
 Yeshaya de-Trani, R. 32n34, 38n59
 Yeshu (ben Pandera, ha-Notsri) 633, 634, 635n63
 Yirmeya, Rav 30
 Yishmael, R. 14n27, 49, 303, 304, 304n24, 305n30, 307, 307n37, 491, 589n44, 633, 633n55, 634, 634n59, 638, 653–655, 654n165
 Yishmael son of R. Elazar b. Azaryah, R. 303
 Yishmael son of R. Levitas, R. 363n65
 Yitshak bar Yaakov bar Giori, R. 29n21
 Rabbi be-R. Yitshak 494
 Yohanan ben Bag-Bag 33, 34, 39
 Yohanan ben Matya 432n94
 Yohanan (ben Nappaha), R. 29, 29n20, 29n21, 30, 30n23, 31, 36n48, 37, 38n61, 87, 88n72, 88n76, 171n120, 249n60, 511n48
 Yohanan b. Nuri, R. 89
 Yohanan ben Zakkai, R. 9n6, 15n35, 23, 33, 33n38, 50n39, 125n90, 133n135, 148, 236n7, 245, 246n47, 260n25, 272n51, 285, 290, 291, 406, 406n56, 504, 528, 529, 529n133, 538, 555–557, 556n107, 556n112, 582, 583, 583n10, 583n13, 587, 587n35, 605, 614
 Yohanan from Sepphoris, R. 68n2
 Yohanan ha-Sandler ('the Alexandrian'), R. 127n100, 616n74
 Yonatan ben Yosef, R. 304n23, 307n37
 Yonatan, king 201n65
 Yose, R. 10, 16n37, 19n52, 34n42, 305, 305n31, 306, 345n178, 517n77, 527n117, 592, 650n140
 Yose b. Meshullam, R. 495
 Yose ben Yehuda, R. 170, 307n37
 Yose ha-Gelili 303, 304, 654n165
 Yose(f) ben Yohanan 113, 125
 Yose be-R. Hanina, R. 29n20, 29n21
 Yosef bar Hama, Rav 35
 Yosef, Rav 30
 Yosef (Yosi) ben Yoezer 113, 125
 Yoshua, R. 10–13, 14n27, 14n31, 15–20, 15n35, 16n37, 17n39–43, 18n44, 19n51, 19n52, 23, 33n38, 118, 125, 127, 148n22, 170n116, 211n100, 239, 270–273, 273n58, 275, 320n19, 377, 406, 427, 428, 428n73, 449, 452, 492, 527, 527n117, 528n128, 529, 583n13, 596n73, 598n75, 616n69, 652n150, 660
 Yoshua ben Levi, R. 30, 118n60, 129, 365, 365n77, 431n90
 Yoshua ben Hananya, R. 616
 Yuda ben Pazi, R. 68n2
- Zacchaeus 230n51, 432n94
 Zadok the Pharisee 606n18
 Zenon 150

Modern Names

- Abusch, R. 448n160
 Abusch, T. 5, 5n17, 5n18
 Achtemeier, P.J. 302n16
 Adesina, A.A. 459n6, 460n10
 Adler, W. 486n96
 Adler, Y. 108n2, 108n4, 115n47–49,
 117n58, 123n80, 124n83, 133n133,
 136n151, 137n154
 Agourides, S. 468n38
 Aland, B. 532n141
 Aland, K. 96n108, 227, 248n53, 358,
 532n141
 Albeck, C. 9n7, 10n11, 11n16, 17n39,
 19n48, 46n25, 77n28, 88n77, 113n38,
 116n52, 119n61, 119n62, 119n64,
 126n96, 128n106, 156n53, 167n97,
 168n100, 206n79, 320n17, 431n89,
 632n48, 653n156, 653n159
 Aletti, J.N. 612n53
 Alexander, L. C. A. 398, 398n22,
 400n33, 547n68, 547n71
 Alexander, P. S. 8n2, 34n41, 37, 37n51,
 152n36, 486n98, 506n24
 Allison, D. C. 242n31, 243n33, 246n45,
 246n47, 246n49, 254, 254n5, 255n10,
 280n4, 282, 282n14, 283, 287n38,
 291n56, 292n64, 293n72, 295n80,
 295n85, 401, 401n37, 405, 514n62,
 515n67
 Allo, E.-B. 414n13
 Alon, G. 9n5, 17n39, 55, 55n64, 56n71,
 88n77, 91n88, 107, 109, 109n8, 110,
 110n12, 110n13, 112n29, 113n33,
 119n62, 120, 120n68, 121, 121n71,
 123, 125n89, 127n104, 149n24,
 176n134, 268n33, 271n50, 272n52,
 272n53, 275n63, 290, 290n53,
 290n54, 319n13, 320, 320n19,
 320n22, 321n27, 378n136, 503,
 503n9–12, 504, 509, 509n34, 509n37,
 521n100, 522, 522n102, 524n111,
 527n117, 528n124, 529n132, 531,
 531n137, 531n139, 535, 535n10,
 536, 536n11, 555, 556n107, 556n110,
 556n112, 557n113, 598n78, 605n15,
 606n21, 610n45, 619n79, 621n1,
 647n120, 647n122, 650n141,
 652n152, 660
 Alston, R. 552n94
 Amador, J. D. H. 460n12
 Amir, Y. 156n53, 159n66, 321n25
 Amram, D. W. 71, 98n115
 Anderson, P. A. 547n69
 Anderson, P. N. 623n7, 624n11
 Appelbaum, A. 556n112
 Applebaum, S. 146n17, 198n47
 Arazy, A. 143, 143n7, 147n19, 160n71
 Ariel, D. T. 542n40
 Aring, P. G. 281n9
 Asaf, S. 166n91, 166n92
 Aschkenasy, Y. vii
 Ascough, R. S. 645n108, 648n124
 Ash, R. 626n18, 626n19
 Ashkenazi, Y. 141
 Ashton, J. 179n146, 179n148, 635n66
 Asiedu-Peprah, M. 298n1
 Attridge, H. W. 43n15, 54n63, 63n106,
 155n52, 156n54, 198n48, 534, 536n12,
 565n29
 Audet, J.-P. 261n1, 521n100, 523n107
 Aune, D. E. 349n9, 398, 398n23, 399n29,
 400n32, 401n35, 405n50, 408n61,
 581n2
 Avemarie, F. 133n133, 351, 351n20,
 364n71, 367n90, 368n91, 370n101,
 375n124, 586n30
 Avigad, N. 152n39, 492n129
 Avotia, S. K. 332n100
 Azaria de Rossi 24n10

 Baarda, T. 181n153
 Bacher, W. 4n10, 4n12, 5n14, 439n130,
 531n137, 535n10, 587n35, 589n42,
 590n46
 Bachmann, M. 347n1, 349n9, 352n23,
 352n27, 367n90
 Back, S.-O. 100n119, 298n5, 301n14
 Backhaus, K. 343n172
 Badian, E. 562n14, 564n21
 Baeck, L. 502n3
 Bakirtzis, C. 322n36
 Baltensweiler, H. 102n125, 102n127

- Bammel, E. 80n46, 260n25, 573n56, 645n110
- Barclay, J. M. G. 42n6, 42n9, 57n74, 57n77, 57n79, 59n86, 59n88, 60n92, 61n95, 63n104, 63n106, 63n107, 64n110, 64n112, 65n117, 208, 208n86, 215, 215n113, 217, 217n121, 317n1, 318, 318n5, 319n11, 321n26, 323n42, 324n50, 326n56, 329, 331n88, 338n136, 379n139, 380, 380n142, 444n139, 450n171, 451n173, 627n26, 658, 658n179–181
- Barnett, P. W. 571n41
- Baron, S. 236
- Barr, J. 264n6, 264n8, 320n20
- Barrett, C. K. 180n150, 331n90, 414n14, 462n20
- Barth, K. 348, 348n5, 349, 372n114
- Barthélemy, D. 449n161
- Basser, H. W. 367n90
- Bassler, J. M. 333n107
- Bauckham, R. A. 364n70, 364n73, 365n82, 437n120, 449n163, 484n86, 485n92, 486n95, 487n101, 490n123, 589n41, 635n67, 635n68
- Bauer, W. 298n5, 299n6, 311n53, 508n33
- Baum, G. viii n2
- Baumbach, G. 54n60, 539n29, 583n15
- Baumert, N. 331n96
- Baumgarten, A. I. 549n81, 611n46
- Baumgarten, J. M. 3n5, 3n6, 24n10, 45n23, 45n24, 46n26, 46n28, 49n38, 84n64, 93n98, 96n108, 110n18, 436n117, 437n120, 437n121, 437n123, 438n127, 439n129, 440n132, 586, 586n32, 598n76, 647n122
- Baumgartner, W. 5n16, 318n8
- Baur, F. C. 350, 350n14, 372n115, 380, 381n146, 395, 395n10, 396, 396n11, 401, 454n184, 462, 462n21, 482, 502, 502n2, 579n78
- Bea (cardinal) 185n165
- Beard, M. 657n176
- Beauvery, R. 335n116, 335n118, 336, 336n120
- Becker, A. H. 622, 622n3, 624
- Becker, H. J. 517n79
- Beckheuer, B. 459n6, 460n11, 464n27, 465n32, 468n39, 469n41
- Beckwith, R. T. 45n23, 46n26, 46n28, 47n29
- Beker, J. C. 444n141
- Belkin, S. 44, 44n16, 45, 45n20, 45n22, 52, 55n64, 56n72, 57n73–75, 57n77–79, 58n82, 59n86–88, 60, 60n90, 60n92–94, 61n95, 61n97–99, 62, 62n100, 62n101, 62n103, 64n112, 83n57, 112n25
- Bell, R. H. 357n38, 370, 370n99
- Ben-Shalom, I. 104n134, 289n46, 578n76
- Berger, K. 76n24, 77n27, 84n62, 96n107, 459n6, 474n56, 481n80
- Berger, P. L. 417, 417n25
- Bergren, T. A. 521n99
- Bernier, J. 623, 624n11, 637n74
- Berquist, J. L. 190n17, 192n23
- Berthelot, K. 57n79, 64n112
- Betylon, J. W. 192n22, 201n67
- Betz, H. D. 267n29, 328n76, 371n105, 396, 396n14–16, 397, 397n19, 411n1, 412, 414n14, 415, 415n16, 445n148, 445n150, 446n151, 446n152, 457n1, 459, 459n6, 460n8, 460n12, 464n31, 466n34, 467n36, 468n39, 516n73, 566n33a, 567, 567n34–36, 568, 568n37–39, 575n65, 577n72, 579n77, 588n38
- Bickerman, E. J. 199, 199n51–54, 393n1, 398, 398n21, 628n28, 631n45
- Bieringer, R. xiv, 67n*, 218, 218n127, 218n128, 411n*, 411n1, 453n179, 453n181, 454, 454n185, 454n186, 458n4, 460n12, 461n13, 461n17, 462n20, 549n78, 559n1, 585n23
- Bilde, P. 539n29
- Billerbeck, P. 116n53, 199n52, 243n35, 244n37, 246n47, 255n13, 256n14, 265n13, 265n17, 298n5, 333, 333n104, 336, 336n122, 345n177, 360n57, 388, 388n22, 389n26, 425n57, 515n65, 517n77, 518n80, 588n38, 617n75, 642, 642n99, 643, 643n100, 649n131, 652
- Binder, D. D. 517n79
- Black, M. 230n52

- Blanton, T.R. 454n185
 Blass, F. 551, 551n86
 Blau, L. 68–70, 70n10, 77n27, 78, 78n34, 79n39, 80n43, 80n44, 80n46, 81n50, 82n52, 83n56, 83n59, 84n62, 88n75, 88n77, 90n81, 91, 91n85, 95n103, 97n109, 97n111, 98n114, 98n115
 Blickenstaff, M. 244n36, 245n42, 246n46, 247n51
 Bloch, R. 142, 142n3, 142n5, 176n135, 179n147, 181n157
 Blowers, P. 236, 236n7
 Boccaccini, G. 417n24, 422n48, 437n120, 486n97
 Bockmuehl, M.N.A. vii, xiv, 53n57, 73, 74, 88n75, 102n128, 182n161, 215n114, 216, 216n115, 216n116, 235n1, 280n3, 295n82, 325n51, 335n113, 357n39, 377n128, 449n161, 450n172, 584n18
 Boeckh, A.W. 21n1, 22n3
 Boer de, M.C. 635n65, 635n66
 Boers, H. 370, 370n103
 Bogaart, N. 141n2
 Bolkestein, H. 338n132, 341n154, 346n183
 Bonsirven, J. 71, 71n13, 72n17, 99n118, 102n125
 Booth, R.P. 11n12, 17n39, 100n119, 125n89, 133n134
 Borgen, P. 159n66, 301n14, 303n20, 321n25
 Bormann, L. 193n30
 Bornhäuser, K. 179n148
 Bornkamm, G. 411n1
 Botermann, H. 381n148, 628n28, 628n32, 631n47
 Botte, B. 132n127
 Bousset, W. 322n33, 348n7, 396, 396n12, 502
 Bovon, F. 612n53
 Bowe, B. 21n*
 Bowen, C.R. 459n6
 Bowker, J.W. 16n38, 582n3
 Boyarin, D. 240n28, 632n50, 634n56, 634n58
 Bradley, D.G. 329n77
 Brandon, S.G.F. 573n56
 Braund, D. 542n43, 543n46, 544n53, 544n55, 544n57, 545n59
 Brawley, R.L. 548n73, 607n23, 609n36
 Brésard, L. 236n6, 249n55
 Breuer, Y. 529n132
 Breytenbach, C. 325n55
 Briant, P. 190n17, 191n18, 191n19, 192n22, 254n4, 318n6, 318n7
 Brighton, M.A. 565n30
 Brin, G., 74, 75, 79n37, 79n40, 84n60, 87n71
 Brocke vom, C. 322n36, 324n44
 Brodribb, W. 626n22
 Brooke, G.J. 415n17, 415n18, 442n136, 447n154, 452n178, 589n41
 Brookins, T. 468n38
 Brooten, B.J. 429n80, 450n169
 Brown, P.R.L. 458n3, 592n56
 Brown, R.E. 179n147, 182n161, 218n126, 220, 220n133, 234n39, 248n53, 276n68, 294n77, 302n16, 308n40, 308n41, 310n48, 372n111, 432n95, 476n63, 514n64, 532n141, 552n93, 567n35, 584n18, 623, 623n8, 624n11, 624n12, 635n65, 635n66, 635n68, 636n69, 636n71, 637n75, 639, 639n84, 639n86, 639n87, 640n90, 641n91
 Brownlee, W.H. 229n39
 Bruce, F.F. 468n39, 480n78
 Bryant, S. 626n22
 Bucer, M. 102n123
 Büchler, A. 57n73, 109, 110n12, 121
 Buck, C.H. 459n6
 Bultmann, R. 96, 179n147, 179n148, 223, 223n2, 255, 303n21, 310n49, 322n33, 323n41, 348n7, 349, 350, 350n16, 350n17, 353n33, 360, 360n55, 374n123, 384, 395, 395n9, 396, 396n12, 401, 411n1, 412, 412n3, 503, 503n5, 503n6, 504, 518n81, 520n95
 Burchard, C. 204n76, 354n34, 363n64, 364n74, 365n82, 366n84, 367n89
 Burgers, W.J. xiv, 143n8
 Burkert, W. 192n22, 408n60
 Busch, K. 348n5
 Buttrick, G.A. 612n52

- Cadbury, H. J. 286n28, 286n30, 324n44,
 533n2, 542n41, 547, 547n69–71, 548,
 548n74, 548n75, 550n85, 551, 551n86,
 551n88, 552n92, 584n20
 Callatay, F. de 254n4
 Calvin, J. 102n123, 351, 351n18
 Cambe, M. 237n11, 244n40, 249n54,
 250n62
 Cancik, H. 546n67
 Caragounis, C. C. 468n38, 557n115
 Cardellino, L. 98n115
 Carleton Paget, J. 509n34, 509n35,
 509n40, 513n57
 Carras, G. P. 321n29, 327n69, 327n71,
 330n87
 Carroll, J. T. 607n24
 Carroll, K. 642, 642n98, 643n100,
 643n102
 Casey, M. 193, 193n30, 320, 320n22,
 348n6
 Cassuto, U. 149n25
 Castelli, S. 41n2
 Charlesworth, J. H. 218n128, 285n24,
 435n112, 449n161
 Chavasse, A. 458n3
 Chazon, E. G. 586n28
 Chilton, B. D. 110n14
 Church, A. J. 626n22
 Clark, E. A. 236n6, 236n7
 Clements, R. A. 586n28
 Cohen, N. 270n40, 275n62
 Cohen, S. J. D. ix n6, 42n6, 63n106,
 146n13, 195n33, 198n46, 207, 207n81,
 207n82, 210, 216n120, 272n53,
 276n67, 301n13, 324n49, 505n17,
 515n68, 528n125, 529n130, 530n134,
 532n140, 534, 536–538, 536n13,
 536n15–17, 557n114, 575n66, 576n67,
 577n73a, 582, 582n3–6, 583, 583n9,
 583n10, 585, 600, 601n91, 621n1,
 622, 622n4, 632n50, 634n60, 638n80,
 646n117
 Cohen, Y. 12n22, 169n108
 Colish, M. L. 446n151
 Collino, L. 317n*
 Collins, J. J. 4n8, 109n8, 157n55, 204n75,
 319n11, 406n54, 417n27, 426n65,
 485n92
 Collins, R. F. 68n4, 70n7, 73, 74n20,
 98n115, 102n129, 325n54, 326n57,
 327, 327n64, 327n69–71, 329n77, 330,
 330n82, 330n85, 330n87, 331, 331n92,
 331n93, 331n96, 332n97, 332n99,
 333n107, 335n118, 336n119, 336n125
 Colpe, C. 122n77
 Colson, F. H. 58n83, 82n53, 113n31,
 159n63
 Congar, Y. 92n93
 Conybeare, F. C. 281n7
 Conzelmann, H. 350n17, 394, 394n7,
 400, 447n154, 478n72
 Corneille, P. 543n47
 Costa, J. 581n1
 Cotton, H. M. 152n36, 197n41, 556n110
 Cowey, J. M. S. 197n43, 197n44
 Cowley, A. 80n44
 Cranfield, C. E. B. 353n31, 353n32, 355,
 357n38, 372n112, 383, 383n1, 384n2,
 385n11, 385n13, 388n24
 Crawford, S. W. 438n127, 438n128
 Crossley, J. 209n95
 Crouzel, H. 236n6, 249n55
 Cullmann, O. 394n4, 399n30, 409n66
 Culpepper, R. A. 218, 218n128, 623n7,
 624n12, 640n88
 Curran, J. 542n43, 555n106

 Dalman, G. 156n53, 170n111
 Dambrowa, E. 564n22
 Danby, H. 193n26
 Darr, J. A. 603, 603n4
 Daube, D. 72, 72n15, 77n27, 92, 92n96,
 93n97, 96n108, 167n97, 343n168,
 588n38, 590n47
 David, H. 633n53
 Davids, P. H. 364n70
 Davies, G. N. 370n104
 Davies, M. 68n4
 Davies, P. R. 3n5, 417n27
 Davies, W. D. 23, 183n162, 242n31,
 243n33, 246n45, 246n47, 246n49, 254,
 254n5, 255n10, 280n4, 282, 282n14,
 283, 287n38, 290n53, 291n56, 292n64,
 293n72, 295n80, 295n85, 318n6,
 514n62, 515n67, 623n9, 642, 642n98,
 643n102

- Debrunner, A. 551n86
 Decharneux, B. 297*
 Defradas, J. 339n142
 Deines, R. 54n60, 55n70, 110n15,
 110n18, 115n46, 581n1, 599n84
 Deissmann, A. 224n12, 343n170, 464n27
 Delitzsch, F. 361n59
 Denaux, A. 608n31
 Depoortere, K. 334n112
 De Rossi, A. 164n87
 Derrett, D. 381n150
 Derrett, J. D. M. 102n126
 Di Segni, L. 564n22
 Dibelius, M. 331n94, 332n97, 332n102,
 333n103, 333n104, 354n34, 362n60,
 363n64, 363n65, 364n74, 365n77,
 451n174, 503, 503n5, 503n6
 Dimant, D. 182n161, 418n31, 436n118,
 437n119
 Dinur, B. 502n1
 Dirkwager, A. 332n101
 Dodd, C. H. 244n39, 245, 245n42, 247,
 248n53, 302n16, 468n38
 Doering, L. 4n9, 21n*, 43n14, 46n27, 48,
 48n33, 48n34, 49n37, 49n38, 50, 50n44,
 51, 51n48–51, 52n53, 53n55, 55n64,
 58n81, 188n6, 279n1, 298n1, 298n5,
 300n11, 302n15, 304n26, 306n33,
 308n41, 310n47, 519n87, 583n13
 Donfried, K. P. 255n12, 323n41,
 371n108, 381n149, 449n161
 Douglas, M. 121n71
 Downs, D. J. 459n6, 467n37, 469n41,
 470n46, 476n64, 477n68, 479n75
 Draper, J. A. 261n1, 521n100
 Driver, G. R. 5n16
 Droysen, J. G. 318n3
 Dulk den, M. xiv, 581n1
 Dumortier, J. 339n142
 Dunn, J. D. G. 103n131, 109n111,
 192n25, 193, 193n27, 289n43, 350n17,
 351n20, 351n22, 352, 352n23, 352n25–
 27, 353, 353n28, 353n29, 354n35,
 357n38, 358n40, 361n58, 369n94,
 370, 370n101, 371n106, 372n115,
 373, 373n117, 376, 378, 385n11, 395,
 395n9, 409n66, 462, 462n22, 585n22,
 621, 621n1, 622n2
 Dupertuis, R. R. 533n1
 Dupont, J. 70n7, 71, 72n17, 73, 97n109,
 99n118, 102n124, 102n128
 Earnshaw, J. D. 383n1, 384n2, 385n15,
 390n32
 Eck, W. xiv, 44n17, 511n51, 534n6,
 543n48, 556, 556n110, 563n19,
 564n26, 627n24, 660n189
 Eck van, E. 253n2, 254n4
 Eckert, W. P. viii n1
 Eckstein, H.-J. 350n12
 Eeuwijk van, P. 141n2
 Ehrlich, U. 651, 651n142, 651n143
 Ehrman, B. D. 512n53
 Eire, C. M. N. 347n2
 Eisenman, R. 229n39
 Eisenstein 367n90
 Elbogen, I. 268, 268n33, 269, 269n34,
 269n35, 275, 275n63, 528n124, 642,
 642n97, 642n98, 652, 652n151
 Elgvin, T. 258n22, 332n100
 Eliav, Y. Z. 510n42
 Elliott, M. W. 236n6
 Ellis, E. E. 447n157
 Elon, M. 6n21
 Engberg-Pedersen, T. 328, 328n74,
 328n76, 337n130, 460n10
 Enns, P. E. 595n68
 Epstein, J. N. 4n11, 8n2, 9n7, 11n12,
 17n40, 19n50–52, 28, 28n18, 30n25,
 30n27, 31n29, 31n31, 35n44, 49n36,
 52n54, 53n55, 80n46, 85n65, 116n52,
 117n56, 317n2, 377n132, 389n26, 398,
 399, 399n24, 632, 632n48, 654n162
 Erasmus 102n123
 Erets, D. 8n2
 Eshel, H. 511n45, 511n51
 Esler, P. F. 209n93
 Evans, C. A. 288n41, 547n69, 624n11,
 639n86, 639n87
 Fallon, F. 204n75
 Feldman, L. H. 42n9, 44, 44n17, 45,
 45n21, 50n45, 54, 54n61–63, 382n151,
 534, 572n49, 606n18, 626n21
 Felix M. M. 297n*
 Feuillet, M. A. 237n11, 241n30, 250n62

- Finkelstein, L. 91n86, 318n6, 388n23
 Fisch. S. 632n49, 634n57
 Fitzmyer, J.A. 5n19, 70n7, 72n17, 73n18,
 74, 84n61, 84n63, 84n64, 95n104,
 95n105, 98n113, 99n116, 102n129,
 105n138, 113n38, 213n108, 217n123,
 248n53, 257n19, 262n3, 263, 263n4,
 264n6, 264n8, 286n32, 293n66,
 348n3, 348n4, 352n27, 355, 356,
 367n90, 372n113, 373n118, 381n148,
 381n149, 382n152, 384, 384n3–6,
 384n8, 385, 385n11–15, 387n17, 388,
 388n22, 388n24, 389n28, 389n30,
 390n34, 395n9, 403n45–47, 404n49,
 408n61, 413n7, 414, 414n12, 414n13,
 415, 415n15, 432n95, 447n154–157,
 448n160, 449n161, 449n163, 450n167,
 461n15, 473n54, 476n65, 477n66,
 479n75, 517n78, 518n83, 542n41,
 547n69, 547n71, 548n76, 548n77,
 551n87, 552n91, 553n95, 564n22,
 572n49, 584n19, 584n21, 586n28,
 589n42, 589n44, 596n72, 600, 600n87,
 645n110, 659n186
 Fleischer, E. 269, 269n36, 269n38,
 273n56, 524n114, 527n121, 528n125,
 528n127
 Flint, P.W. 238n12
 Flusser, D. vii, xii, 6n20, 23, 26n17, 42n5,
 132n130, 143n8, 146n13, 158n58,
 169n109a, 177n139, 182n159, 189n9,
 197n41, 223, 223n*, 223n1, 223n2, 226,
 226n24, 226n25, 227, 228n35, 229n43,
 229n44, 232n56, 233n61, 246n**,
 253n2, 254, 254n7–9, 255n10, 256,
 256n15, 256n16, 257n17, 258, 261n1,
 282, 282n12, 282n13, 283, 285n24,
 292n58, 293n70, 294n74, 294n78,
 340n152, 345n176, 345n180, 357n39,
 363, 364n67, 416n20, 417n26, 419n38,
 421n43, 421n46, 422, 422n48, 422n54,
 423, 425, 425n57–59, 427n70, 427n71,
 436n113, 442n137, 444n142, 487n103,
 503n12, 504, 504n13, 507n26, 516n73,
 519n87, 521n96, 521n99, 521n100,
 523n110, 524n111, 525n115, 527n117,
 551n86, 600, 600n87, 611n48, 619n79,
 644n106, 652n150
 Foakes-Jackson, F.J. 610n42
 Foerster, G. 114n44
 Fontanille, J.-P. 542n40
 Forkman, G. 643, 643n102, 644n104,
 644n107
 Fortes, R. 297n*
 Fortna, R.T. 178n141, 302n16, 308n41,
 310n49, 635n66
 Frankel, Z. 3n1
 Fredriksen, P. 505n20, 586n26, 622,
 622n2, 657n174
 Freudenberger, R. 628n28, 628n33,
 629n34, 629n35, 630n41, 631n42,
 631n43, 631n45, 631n47, 633n53, 634,
 635n61, 657n176
 Frey, J.-B. 153n44, 319n15, 321n23,
 417n24, 417n27, 660n188
 Friedman, M.A. 74, 77n26, 78n31,
 78n33, 80n46, 83n57, 166n92, 197n41,
 367n90
 Friedman, S. 632n48
 Friedrich, G. 223n3, 224n7, 224n9,
 224n12, 224n13
 Friend, T. 658n178
 Friesen, S.J. 322n36
 Frye, R.N. 5n16, 318n9, 318n10,
 321n24
 Fuchs, M.Z. 269n38
 Funck, B. 192n22
 Funk, X. 346n184
 Furnish, V. 413n5, 413n9
 Gafni, I. 173n133
 Gaisford, T. 634n58
 Gaon, S. 651
 García Martínez, F. 227n28, 417n28,
 437n122, 442n137, 449n161
 Garlington, D.B. 354n35, 370n104
 Garroway, J.D. 570n40
 Gaston, L. 371n106, 377n133, 607n24
 Gelderen van, M. 347n2
 Georgi, D. 454n184, 459n6, 460n11,
 461, 462, 462n18–21, 463n25, 465n32,
 467n36, 467n37, 469n41, 470n46,
 470n47, 475n59, 476n62, 478n71,
 484n86
 Gerber, C. 41n1, 42, 42n9, 54n60, 54n63,
 62n103, 63, 63n104–106, 63n108

- Gerhardsson, B. 103n131, 284n22,
303n21, 330n87, 396n12, 398n21, 399,
399n27–30, 401, 402, 402n39, 402n41,
408n61, 409, 409n64, 504n14, 505n17
- Gertner, M. 596n74
- Gibson, J. J. 574n57, 577n73
- Gilat, Y. D. 12n22
- Ginouvés, R. 111, 111n21, 126n96, 137
- Ginzberg, L. 3n1, 3n6, 36n48, 127n105,
128n111
- Girod, R. 134n141
- Glover, R. 177n138
- Gnilka, J. 415, 415n17, 421n43, 422n49
- Goethe 365n77
- Goguel, M. 459n6, 460n8, 476n64,
477n66
- Goldberg, A. 10n10, 11n14, 12n20,
12n21, 14n27, 20n53, 92n92, 104n134,
116n52, 117n59, 127n102, 164n86,
270n45, 272n55, 290n51, 306n34,
377n132, 425n61, 428n74, 428n75,
587n36, 592n54, 600n90, 606n19,
632n48, 648n128, 649n129
- Goldenberg, D. 43n15, 540n33, 583n16
- Goldin, J. 91n86
- Goldsworthy, A. 625n17
- Goodblatt, D. 173n133, 187n3, 188n4,
189n9, 193n30, 200, 200n59–64, 201,
201n65, 201n67, 204, 211n100, 536,
537, 537n18
- Goodenough, E. R. 62, 64n112
- Goodman, M. xiii, 8n2, 216, 216n117,
477n67, 483, 506n24, 511n45, 542n43,
544n53, 552n94, 556n111, 559–561,
559n1, 559n3, 559n4, 560n5, 560n6,
561n9, 563, 564n20, 564n24, 565, 566,
566n31, 573n55, 575n66, 576n68, 578,
578n74–76, 579n78, 606n18, 658n181
- Goppelt, L. 646n115
- Goranson, S. 4n7
- Gowler, D. B. 603, 603n4
- Grabbe, L. L. 190n17, 318n4, 318n6–8,
318n10, 322n30, 322n31, 378n134,
606n17
- Graetz, H. 12, 12n21, 13, 13n25, 13n26,
162n77, 164n86, 289, 289n49, 289n50,
290n51, 377, 377n129, 377n132,
428n74, 502, 502n2, 530n134, 579n78,
598n78, 606n19, 642, 642n94, 642n95,
642n97, 642n99, 643, 652, 652n153,
654n161
- Grant, R. M. 444n139, 451n173, 476n63,
506n23, 625n17, 629n34
- Grässer, E. 179n146, 179n147
- Green, W. S. 15n34
- Greenfield, J. C. 5n19
- Greer, R. A. 408n60
- Griffiths, G. T. 192n23
- Grintz, J. (Y.) M. 24n10, 142, 142n6,
148n21, 149n23, 188n4, 197n41
- Gulak, A. 165n89, 197n41
- Gundry, R. H. 233n60
- Gutbrod, W. 176n135, 193n30, 219,
219n131
- Gutman, S. 114n44
- Hadas-Lebel, M. xiv, 41n3
- Haenchen, E. 227n27, 308n41, 323n41,
607n22, 612n54
- Haffner, S. 219, 220n132
- Hägerland, T. 218n126, 624n11
- Hahn, F. 131n126, 134n145
- Hakola, R. 623n10
- Halpern-Amaru, B. 586n28
- Halton, C. 209n95
- Harland, P. A. 645n108, 648n124
- Harnack, A. 328n75, 395, 396n11,
465n32, 502n3, 513n60, 619, 619n80
- Harrington, D. 542n41
- Harrington, H. K. 120, 121, 121n69
- Harrison, J. R. 324n50
- Harvey, G. 192, 192n25, 193, 193n26,
193n30, 196
- Häusser, D. 400n34, 401n35, 408n62,
409n65
- Havazelet, M. 39n65
- Hayes, C. E. 26n17, 121, 121n71, 287n34
- Hays, R. B. 241n30
- Hayward, C. T. R. 574n57
- Heemstra, M. 408n60, 477n67, 658n181
- Hegel, G. W. F. 462
- Heinemann, I. 55n64, 58n81, 64n112,
82n55, 83n56, 321, 321n27, 321n28,
358n43, 434, 434n109–111
- Heinemann, J. 8n2, 10n9, 268n33,
507n29, 528n124

- Heinrici, C. F. G. 460n8
 Hekster, O. 542n43, 543n46, 544n53
 Hemelsoet, B. vii
 Hempel, C. 3n5
 Hengel, M. viii, 12n21, 13n25, 54n60, 55n70, 110n15, 110n18, 149n24, 162n75, 286n30, 289n43, 289n46, 290n51, 318n4, 322n33, 323n41, 324n43, 354n34, 364n71, 365n82, 367n89, 374n121, 377n128, 428n75, 474n58, 480n77, 534n6, 559, 559n2, 560, 560n8, 563, 564n20, 566n33, 572n47, 572n48, 573n51, 573n56, 574n57, 574n59, 575n66, 577n70, 577n71, 577n73, 581n1, 606n19, 610n43, 612n53, 648n128, 660n187
 Henten van, J. W. xiv, 207n83, 359n47
 Hentschke, D. 270n43, 652n150
 Herford, T. 642, 642n96, 642n98, 643n100, 643n102
 Herr, M. D. 42n7, 47n29, 49n38, 52n54, 53n55, 309n45
 Hezser, C. 471n49, 505n18, 582n8, 598n78, 599n79–81, 659n184
 Higger, M. 254n7
 Hirshman, M. 587n34, 588n40
 Hock, R. F. 345n180
 Hoek van den, A. 408n60
 Hofius, O. 103n131, 409n66
 Hogan, P. N. 445n148
 Hogeterp, A. L. 135n147, 452n178, 453n179, 453n180
 Holl, K. 459n6, 464n31, 465, 465n32, 465n33, 473n53, 484n86, 487n105
 Hollander den, W. 534, 534n4, 541n36, 542n40, 555n106, 576n68
 Hollander, H. 401, 401n38, 402, 402n39
 Holtz, T. 327n67, 330n87, 333n107, 335n113, 335n118, 336n120, 337n128
 Honigman, S. 198, 198n45, 198n46, 202
 Hooker, M. D. 317n*
 Horbury, W. xiv, 272n54, 276n65, 327, 327n66, 509n34, 509n40, 512n55, 513n57, 542n40, 581n1, 651, 651n146–148, 652n152, 652n153, 661n193
 Horovitz, H. S. 303n22
 Horrell, D. G. 628n28, 630n40
 Horsley, G. R. 324n44
 Horsley, R. A. 573n56
 Horst van der, P. W. xiv, 143n8, 276n64, 320, 320n22, 378n138, 413n8, 565n28, 651, 651n147, 651n148
 Hoskyns, E. C. 348n5
 Hudson, R. A. 141n1
 Hunzinger, C. H. 643n102, 645n110, 649n132, 649n133, 649n136, 650n140
 Hurd, J. C. 26n16
 Hurtado, L. W. 348n6, 459n6, 467n36, 468n40, 469n42, 469n43
 Hüttenmeister, F. 108n4, 114n45, 115n48
 Hvalvik, R. [H.] 509n34
 Hyman, A. 126n99, 306n35, 614n60
 Ilan, T. 429n81
 Ingleson, J. 658n178
 Instone-Brewer, D. 75, 78n29, 84n63, 98n115, 102n129
 Isaac, B. xiv, 511n45, 511n47, 512n52, 556, 556n110, 660n189
 Isaac, J. viii
 Itter, A. C. 408n60
 Jackson, B. S. 69n5, 70n8, 80n46
 Jackson, J. 627n23
 Jacobs, A. 624n15, 624n16, 657, 657n174, 657n177
 Jacobs, L. 5n13, 6n21
 Jaffé, D. 302n18
 Janssen, L. F. 657n176
 Jastrow, M. 320n21
 Jaubert, A. 45, 45n23, 45n24, 266n22, 308, 308n40, 328n75, 523n107, 523n110
 Jefford, C. N. 261n1
 Jeremias, J. 233n61, 246n46, 253n2, 254, 254n3, 254n6, 255, 255n10, 255n13, 256n14, 257n17, 261n1, 264n6, 264n8, 374n123
 Jervell, J. 113n38, 323n41, 324n47, 324n49, 464n30, 472n51, 474n56, 478n73, 479n75, 481n80, 607, 607n22, 607n23
 Jeselsohn, D. 151n34a
 Jewett, R. 322n36, 323n40, 397n18, 467n36, 482n82, 577n73
 Johns, L. L. 285n24

- Johnson, L. T. 542n41
 Jones, C. P. 542n40
 Jones, J. 417n26
 Jonge de, M. 421n43
 Joosten, J. xiv, 4n12, 5n18, 6n20, 468n38
 Joubert, S. 459n6, 470n46
 Jowett, B. 560n7
 Jülicher, A. 253n2
- Kadari, T. xiv, 235n1, 236n7, 238n14, 238n15, 240n26
 Kahana, M. 89, 89n79, 90n83, 91n86, 91n89, 92n91, 240n23, 439n131, 587n36, 589n44
 Kaiser, C. B. 252n**
 Kalmin, R. 583n10, 635n63
 Kalms, J. U. 41n3
 Kampen, J. 84n63, 99n117
 Kant, E. 122n78
 Karavidopoulos, J. 323n38
 Karo, Y. 117n57, 130n119
 Käsemann, E. 349, 349n11, 350, 352n24, 384, 393n3, 462, 462n20
 Katz, S. T. 633n51, 651n147, 652n154, 654n165
 Kazen, T. 17n39, 67, 100n119, 122n77, 125n89, 131n120, 131n121, 131n124, 133n133
 Keck, L. E. 547n69
 Kee, H. C. 421n43, 422n52
 Keener, C. S. 102n126, 102n129
 Kelly, J. N. D. 369n98, 408n60, 408n61
 Kim, B.-M. 459n6, 463n23
 Kim, S. 331n91
 Kimelman, R. 236n7, 269n38, 276n64, 634n56, 634n57, 640n88, 641n93, 651, 651n145, 651n147, 651n148, 653n160
 King, J. C. 236n6
 Kingsbury, D. 607n24
 Kingsbury, J. D. 407, 407n59
 Kiperwasser, R. 253n2, 258n22
 Kirchschräger, W. 98n115
 Kirkland, J. R. 407n58
 Kister, M. xiv, 4n12, 84n60, 84n64, 97n109, 166n91, 197n41, 332n100, 616n71, 616n74, 618n77
 Kittel, G. 142n4, 193n30, 219, 219n131
- Klauser, T. 132n130–132
 Klausner, J. 635n63
 Klawans, J. 14n29, 110n12, 121, 121n70, 121n73, 123n80, 131, 131n123–125, 132, 132n128, 133n133, 136n149, 137, 137n155, 137n156, 138n157, 209n95, 287n34, 533n1, 534n5
 Kleinschmidt, F. 102n126
 Klink, E. W. 624n11
 Kloner, A. 511n50
 Kloppenborg, J. S. 323n39, 326n62, 329n77, 337n131, 339n139, 340n150, 342n159, 342n165, 343, 343n170, 343n172, 624, 624n13, 637n72, 638, 638n79, 638n82, 640n88, 644n105, 645n108, 648, 648n124
 Knibb, M. A. 422n54, 423n55
 Knohl, I. 592n54
 Koch, D.-A. 478n72, 592n55
 Koehler, L. 5n16, 318n8
 Koester (Köster), H. 223n3, 224n12, 233n60, 326n61, 326n62, 327n63, 327n67, 333n107, 337n131, 522n101, 523n105
 Koester, C. R. 640n88
 Koet, B. J. 393n1, 554n103, 572n43, 612n53, 615n65
 Koffmahn, E. 167n98
 Kokkinos, N. 541, 542n40, 542n43, 543n46, 543n48, 544n51, 544n52, 544n56, 546n64, 555n104, 555n106, 556n111
 Konradt, M. 332n100, 333n105, 333n107, 364n69, 368n92
 Kooten van, G. H. 448n159
 Kooyman, A. C. 97n111, 99n117
 Kosovsky, M. 31n31, 171
 Kotlar, D. 108n7
 Kraabel, A. T. 108n3, 124n84, 195, 195n33, 213n106
 Kraeling, E. C. 147n18, 153n42
 Kraemer, R. S. 195, 195n32, 450n169
 Kraft, R. A. 509n34, 521n100, 522n104
 Krenkel, M. 554n103, 572n43, 615n65
 Krieger, K.-S. 53n56
 Krygier, R. 100n119, 309n46
 Kuhn, K. G. 142n4, 147n19, 149n26, 156n53, 187n3, 188n5, 192n25,

- 193, 193n27, 193n30, 194, 199, 200,
200n57, 200n58, 219, 414n12, 643n102
- Kümmel, W. G. 308n39
- Kunkel, W. 39n66
- Kushnir-Stein, A. 541–542, 542n40
- Küng, H. 393n3
- Küster D. E. 235n1
- Kutscher, E. Y. 264n8
- Kuyt, A. 7n*
- Kvalbein, H. 261n1
- Lachs, S. T. 271n47, 528n129
- Lagrange, M.-J. 99n118, 102n128,
281–283, 281n7, 281n10, 283, 287n37,
288n42, 348n4, 356, 384n7
- Lake, K. 610n42
- Lambrecht, J. xiv, 325n55, 326n57,
330, 330n83, 333n107, 412n4, 413n5,
413n7, 414n14, 441n135, 450n170,
453n179, 460n9, 469n44
- Lampe, P. 464n29, 556n109, 557n116
- Lancey, J. C. 102n128
- Lane, W. L. 557n115
- Lange de, N. 238n13
- Langer, R. 269n38, 651, 651n143,
651n144, 652n150
- Langerbeck, H. 369n96
- Langevin, P.-E. 326n60
- Lapin, H. 197n41, 556n107, 556n112,
582n3, 598n78, 599n80, 625n17,
648n124, 659, 659n183, 659n184
- Laqueur, R. 533n2, 536, 536n13,
536n14
- Lavan, M. 571n41
- Law, T. M. 209n95
- Lawrence, J. D. 121n73, 123n81, 128,
128n109, 128n110
- Lawson, R. P. 236n2
- Légasse, S. 285n26, 324n48, 325n53,
326n60, 330n82, 332n100, 335n118,
338n134, 338n135, 348n4, 385n11,
385n15, 390n33
- Lehmann, M. R. 98n115
- Lehming, H. 348n6
- Leibson, G. 643, 643n103, 649,
649n133–136, 650, 650n137, 650n139
- Leiman, S. 49n37
- Leon, H. J. 153n45
- Lerner, M. B. 12n20, 599n81, 616n70,
616n73
- Lessing, G. E. 223n1
- Levi, G. 503n9, 529n132, 621n1
- Levine, A.-J. 209n93
- Levine, L. I. 114n44, 598n78, 650n141
- Levinson, J. 591n51
- Levinson, N. P. viii n1
- Lewin, B. M. 31n29, 529n132, 582n7
- Licht, J. 189n9, 230n49, 426n63,
436n115, 644n105, 644n106
- Lichtenstein, H. 13n25, 49n37, 57n73,
162n73–75, 162n77, 163n78, 163n80,
163n81, 289n50, 377n130
- Lieberman [Liebermann], S. viii, ixn6, 5,
5n13, 5n15, 8n2, 11n14, 12n20, 14n29,
16n38, 17n40, 20n53, 38n60, 51n47,
77n28, 118n60, 127, 127n105, 149n24,
164n86, 229n40, 236n5, 304n25,
305n27, 306n33, 320, 320n19, 320n21,
320n22, 328n72, 360n57, 377n133,
431n91, 531n138, 614n63, 632n48,
633n51–53, 634n56, 635n61, 647n120,
647n121, 648n127, 652n150, 653n158,
660n190
- Lieu, J. 581n1
- Lifshitz, B. 152n36, 152n38, 152n39,
153n44, 153n45, 320n22, 492n129
- Lim, T. H. 413n7
- Lindemann, A. 396n11
- Lipschits, O. 201n67
- Loader, W. R. G. 98n115, 102n126
- Löhr, H. 592n55
- Lohse, E. 385n11, 449n161
- Lombard, E. 459n6
- Lona, H. E. 328n75, 557n115
- Long, F. J. 455n190, 460n12, 461n13,
461n16
- Lövestam, E. 70n8
- Lowe, M. F. 141n2, 179n146, 179n148,
188n5, 207, 207n80, 209, 209n95, 210,
213n106, 218
- Luck, U. 342n159
- Lüdemann, G. 478n72
- Lurie, B. Z. 12n23, 162n73, 162n75
- Luther, M. 102n123, 347–350, 347n2,
603n7
- Lüthi, M. 254n8

- Luz, U. 69n6, 99n117, 102n129, 243n32, 246n45–48, 248n53, 250n61, 254, 254n3, 254n6, 255, 255n10–12, 256n14, 257n20, 262n3, 263, 264n6–8, 265n12, 265n15, 265n17, 267n26, 267n29, 269n37, 280n2, 281n7, 283, 283n16–18, 290n53, 292n59, 292n64, 294, 294n74–76, 295n79–81, 295n85, 507n29, 514n62, 514n64, 515n65, 515n71, 516n73, 516n74, 517n79, 518n80, 518n81, 518n86, 519n90, 520n93, 521n96–98, 522n101, 549n78, 645n111
- Lykke, A. 545n59
- Lyons, W.J. 603, 603n1, 603n3, 603n5
- Machinek, M. 69n6
- MacWhirter, J. 241n29, 241n30, 249, 249n54, 249n58
- Mader, G. 534, 561n12, 563n17, 565n30
- Maeir, A.M. 21n*, 39n64, 647n119
- Maertens, P. 380, 380n145
- Maier, J. 634n58, 651n147
- Malherbe, A.J. 215n114, 326, 326n61, 326n62, 327n63–65, 329, 329n80, 330n84, 334, 334n110, 336n125, 337n131, 343n167, 343n170
- Mandelbaum, B. 170n110, 238n16, 239n19
- Mann, J. 494n137
- Ma'oz, Z. 114n44
- Maresch, K. 197n43, 197n44
- Marguerat, D. 214n111, 478n70, 547n69, 548n72, 549n79, 549n83, 552, 552n92, 612n53
- Margulies, M. 12n23, 33n38, 127n105, 166n92, 257n17, 335n114, 365n77, 196n37
- Marquardt, F.-W. 348n6
- Martin, R.P. 452n178
- Martyn, J.L. 218, 218n126, 302n16, 302n19, 311n52, 445n148, 446n151, 459n6, 466n34, 467n37, 532n140, 547n69, 622–624, 623n5, 623n6, 623n8, 623n10, 624n11, 635n68, 637n77, 638n78, 643, 643n100, 646n115, 650
- Mason, S. 42n6, 156n53, 202, 207–209, 207n83, 207n84, 208n85, 209n95, 216n120, 266n20, 534, 537, 537n20, 539, 539n28–30, 542n40, 548n73, 549n81, 554n103, 561, 561n11, 563, 563n18, 564, 564n25, 565n30, 574n57, 576n68, 577n73a, 583n15, 604n6, 605, 605n12, 606n21, 607n23, 611n46, 612n51, 613n55, 615n65, 658n181
- Mattern, L. 353n30, 625n17
- Maurer, C. 332n100, 333n103–105, 333n107, 334n109
- McLaren, J.S. 534, 560, 561, 561n9, 561n10, 563n18
- Meeks, W.A. 179n146, 179n147, 445n148, 530n134, 595n68, 623n9, 624, 624n12, 640n88, 651n148
- Meier, J.P. 4n7, 5n13, 17n39, 68n4, 70n8, 76, 76n24, 78n29, 79n36, 84n63, 95n104, 102n127, 133n134, 229n43, 294n77, 295, 295n82, 295n85, 552n93, 581n1, 581n2
- Melanchton, P. 102n123, 348, 395, 395n9
- Melick, R.R. 459n6, 463n23
- Meritt, B.J. 153n44
- Merkel, H. 607n24
- Merz, A. 253n1, 253n2
- Meshorer, Y. 151n34
- Méthy, N. 629n34, 629n35, 630n41, 631n42, 631n44
- Metzger, B.M. 589n42, 589n44, 589n45
- Metzger M. 134n139
- Meuzelaar, J.J. 182n161
- Michaels, J.R. 518n81
- Michel, O. 181n153, 353n30, 385n15
- Mignard, J.E. 643, 643n102, 644n104, 644n107
- Milgrom, J. 116n54, 120, 120n68
- Milik, J.T. 486n100
- Milikowski, C. 8n2
- Millar, F. 510n42, 511n45, 511n46, 541n36, 542n43, 544n53, 550n85, 553n98, 556n111, 563n19, 564n22, 566n33, 578n76
- Miller, D.M. 193, 193n28, 193n29, 196, 200n59, 202, 202n69, 207, 209, 209n93, 209n94, 215n112, 219, 450n172

- Miller, S.S. 540n33, 659n184
 Milligan, G. 338n136
 Minear, P.S. 370n104
 Mitchell, M.M. 329n77, 396n13, 403n44, 459n7, 460n8, 460n12, 461, 461n14, 462, 462n18, 468n38, 505n19, 506n23, 522n103
 Mohri, E. 432n98, 433n101
 Momigliano, A. viii, 45n22, 63n105, 63n107, 64n111, 64n113, 65n116, 192n22, 199n51, 210n96, 317, 318n3, 318n4, 318n6, 562n14, 603n5, 604n9, 626, 626n20, 626n21, 628, 628n29
 Mommsen, T. 64n112
 Montefiore, C.J.G. 71, 71n12
 Moo, D.J. 372n113, 385n11
 Moore, G.F. 45, 45n22, 52, 63n105, 351, 351n19, 492n134, 502, 502n4, 504
 Moreland, M. 553n95
 Morissette, R. 596n74
 Murray-Jones, C.R.A. 240n24, 406, 406n55, 408n60, 409n63, 486n97, 486n99
 Moule, C.F.D. 573n56
 Munck, J. 372n113, 459n6, 464n30, 465, 465n33, 473, 474n56, 478n71, 478n73, 481n80, 612n52
 Murcia, T. 632n50, 634n56
 Murray, R. 179n146, 179n147
 Mussner, F. 354n34, 364n70, 365, 365n77, 365n81
 Mutzenbecher, A. 369n96
 Myre, A. 73n18
 Nachman [Nakman], D. 42n7, 43n15, 55n68, 65n118, 540, 540n34, 583n17
 Nanos, M.D. 475n60
 Nasrallah, L. 322n36
 Nathan, E. xiv, 415n16
 Naveh, J. 138n158, 153n41, 492n130, 495n142, 517n79
 Neiryneck, F. 70n7, 72, 99n118, 401, 401n36, 403, 403n45, 404n49
 Nembach, U. 72, 72n16, 88n75, 102n126
 Nestle, E. 96n108, 227, 232n58, 358
 Neudecker, E. 72n15, 74, 74n21, 76n23, 81n49, 82n54, 82n55, 83n58, 86n69, 90n81, 91n86, 91n89, 92n90, 99n118, 102n126, 292n65
 Neusner, J. viii, ix n5–6, 7, 7n*, 7n1, 10n11, 14, 14n28–31, 15n32, 15n33, 15n35, 110, 110n14, 117n57, 130n119, 173n133, 193n26, 272n51, 284n22, 303n21, 345n180, 399, 399n29, 504, 504n14, 504n16, 505, 505n17, 517n77, 535–539, 535n8, 535n9, 538n21, 539n27, 576n68, 576n69, 582n3, 633n51, 647n120, 647n121
 Neutel, K.B. 445n148, 446n151, 446n152
 Newsom, C.A. 448n160
 Newton, M. 131n125, 132n129, 135n147, 453n180
 Nickelsburg, G.W.E. 146n14, 156n54a, 157n57
 Nickle, K.F. 459n6, 475n59
 Nicol, W. 302n16
 Niebuhr, K.W. 322n32
 Niederwimmer, K. 261n1, 521n100
 Niehoff, M.R. 599n83
 Noam, V. 14n29, 43n15, 75, 84n60, 84n63, 89n79, 121, 121n72, 122n78, 162n73, 162n74, 162n77, 163n78, 275n61, 287n34, 289n50, 427n68, 527n118, 546n65
 Nobilio, F. 297n*, 308n38
 Nodet, É. 83n58, 534, 534n4
 Nöldeke, T. 320n22
 North, J. 657n176
 Nygren, A. 353n32
 Oberhammer, E. 322n36
 Oberman, H.A. 347n2
 Oepke, W. 447n153
 Ogereau, J.M. 459n6, 470n46, 476n62, 480n77
 Olsen, V.N. 102n123
 Olsson, B. 517n79
 Oort van, J.A. 349n8
 Oppenheimer, A. 173n133, 511n47
 Osten-Sacken von der, P. 351n18, 371n108, 417n27, 418n29, 418n30, 418n32, 419n37, 421n43, 422n51

- Ott, A. 70, 71, 71n11, 99n118, 101n121, 102n123, 102n125
 Ottenheijm, E. xiv, 253n1, 253n2
 Otto, R. 363
 Oudshoorn, J. G. 197n41
 Overbeck, F. 607n22
 Overman, A. 651n147
- Pagán, V. E. 626n19
 Painter, J. 179n146, 180n150
 Pancaro, S. 179n146, 179n147
 Pardee, D. 33n36, 33n38, 34n40, 38n62
 Parente, F. 565n30
 Parkes, J. viii, 181n158, 621n1, 642, 642n98
 Pawlikowski, J. T. 21n*
 Pelletier, A.-M. 236n6, 237n9
 Penella, R. J. 332n101
 Penna, R. 326n58
 Penner, J. 268n33, 269n38
 Penner, T. 533n1
 Perelmutter, H. G. 21n*
 Perrot, C. 229n40, 230n53
 Pervo, R. I. 113n38, 542n43, 543n45, 548n77, 550n85, 554n103
 Pesch, R. 217n123
 Philonenko, M. 423n55
 Pilhofer, P. 322n37, 478n73
 Pines, S. 179n144
 Ploeg, J. van der 423n55
 Plümacher, E. 286n30, 570n40, 615n66
 Plummer, A. 413n9, 413n10, 414n13
 Poirier, J. C. 109n11, 123n81
 Pollefeyt, D. xiv, 218
 Poorthuis, M. J. H. M. 253n1, 253n2
 Popkes, W. 368n93
 Porten, B. 80n43, 80n45, 135n12
 Porter, S. A. 325n54
 Porter, S. E. 468n38, 468n39
 Pratt, M. L. 658n179
 Preschel, T. 39n65
 Price, J. J. 559n4, 561n12, 573n54, 574, 574n59, 574n61, 575n63
 Price, S. 657n176
 Prigent, P. 508n32, 509n34
 Pritchard, J. B. 145n10
 Proksch, O. 484n87, 484n88, 487n106, 488n112
- Prostmeier, F. R. 507n25, 509n34, 509n36, 509n40, 511n46, 512n54, 512n56, 513n57–60
 Puech, E. 228n37, 594n63
- Qimron, E. 23, 23n4, 24n7, 24n11, 25n12, 84n60, 416n21, 613n57
- Rabbinovicz, R. N. N. 172n127
 Rabello, A. M. 167n98
 Rabin, C. 149n24, 168n101
 Rabin, I. A. 303n22, 320n20
 Racine, J. 543n47
 Radl, W. 610n38
 Räisänen, H. 370n100
 Rajak, T. 51n48, 54n60, 534, 560, 560n8
 Rapp, B. 238n14
 Rappaport, U. 12n21
 Ratzinger, J. 69n6
 Reed, A. Y. 622, 622n3, 624
 Reeg, G. 108n4, 114n45, 115n48
 Regev, E. 24n10, 42n7, 43n15, 55n68, 65n118, 540n34, 592n52, 599n84
 Reich, R. 108n4, 114n44, 115n46, 115n48
 Reichert, A., 630n41
 Reif, S. C. 269n38
 Reim, G. 179n143
 Reinach, T. 44n19, 63n105
 Reinhartz, A. 209, 209n95, 218, 219, 219n129, 623, 623n10, 624n11
 Reinmuth, E. 324n48–50, 325n53, 327, 327n68, 330n82, 330n85, 331n94, 333n107, 334n112, 336, 336n120
 Rengakos, A. 562n15
 Rengstorf, K. H. 396n11
 Rese, M. 607n22, 608n31
 Revel, B. 54n61, 57n78
 Rey, J.-S. 586n28
 Reynolds, J. 286n31, 325n52, 345n182
 Richard, M. 236n5, 237n9, 249n56
 Richardson, P. 92n94, 402n41
 Ridderbos, H. [R.] 350n17, 384n6
 Riedel, W. 236n6, 237n9
 Riesner, R. 400n33, 401n35, 401n36, 405n50
 Rijk-Chan de, V. 143n8
 Ritter, B. 44, 62

- Rives, J. B. 382n151, 574n61, 592n56, 625n17, 628n33, 631n45, 657n176
- Rizzi, M. 530, 530n135
- Robinson, J. M. 503n8
- Roetzel, C. J. 327n67
- Rogier, J. 141n2
- Rogkotis, Z. 562n15
- Rordorf, W. 261n1
- Rosen, H. B. 149n24, 152n36
- Rosenfeld, B.-Z. 528n123
- Rosen-Zvi, I. (Y.) xiv, 67n*, 67n1, 75, 78n29, 85n65, 88n72, 88n75–77, 89, 89n79, 90, 91n87, 91n89, 92n91, 93n97, 98n115, 306, 307n36, 591n51, 593n59
- Rosner, B. S. 327n69, 327n71, 330n87
- Rossano, P. 335n118, 336, 336n120
- Rothschild, C. K. 533n3, 542n41, 546n67, 547n69, 570n40
- Rousseau, A. 243n35
- Rousseau, O. 236n2
- Rowe, C. K. 547n68
- Rowland, C. 240n24, 406, 406n55, 408n60, 409n63, 486n97, 486n99
- Rubenstein, J. 122n78
- Ruether, R. R. viii n1
- Runesson, A. 108n4, 114n42, 115n50, 123n81, 134n139, 208, 209n92, 209n93, 217n124, 517n79
- Rutgers, L. V. 108n4, 110n15
- Safrai, C. 429n80, 646n117, 649n130
- Safrai, S. vii, viii, 4n12, 5n13, 5n15, 9n4, 9n8, 10n11, 12n19, 18n44, 26n17, 38n63, 51n46, 55n64, 55n66, 55n67, 55n69, 86n66, 91n86, 107n1, 108n2, 110n18, 117n58, 121n70, 123n81, 125n90, 125n91, 127n102, 127n104, 128n108, 129n114, 133n133, 133n138, 136n152, 143n8, 146n13, 146n17, 151n34a, 163n82, 197n41, 264n6, 270n39, 270n43, 272n52, 272n53, 284n23, 290n53, 327n71, 345n179, 357n39, 377n131, 399, 399n26, 425n57, 425n61, 426n63, 427n66, 427n67, 428n73, 428n76, 428n77, 429, 429n78–80, 430n85, 433n100, 439n131, 441n134, 471n50, 479n75, 493n136, 494n138, 503n11, 520n94, 524n114, 527n117, 528n125, 529, 529n130, 556n107, 598n78, 599n79, 600n90, 605n15, 606n16, 608n34, 611n48, 613n59, 614n62, 616n68, 616n72, 619n79, 649n129, 649n130, 652n150, 660n191
- Safrai, Z. xiii, xiv, 21n*, 39n64, 107n1, 110n18, 116n51, 116n53, 117n58, 121n70, 123n81, 125n90, 125n91, 127n104, 128n108, 129n114, 133n138, 136n152, 162n73, 173n131, 426n63, 457, 458n4, 567n36, 568n39, 579n78, 634n56, 643n103, 646n117, 649n130, 652n150
- Said, S. 562n15
- Saldarini, A. J. 504n14, 505n18
- Salzman, M. R. 458n3
- Sanders, E. P. vii, 24n8, 54n60, 55n70, 68, 68n4, 107, 109–114, 109n9, 109n11, 110n14–18, 111n21, 111n24, 112n26, 112n30, 113n31, 113n37, 114n41, 114n43, 123, 123n81, 125n89, 128, 128n108, 136n151, 138, 289n43, 349n9, 351, 351n21, 351n22, 352, 352n23, 353n28, 353n30, 370, 370n100, 374, 374n119, 462, 462n22, 504, 504n13, 574n60, 577n71, 581n1, 584n20, 585n22, 599n84, 600n86
- Sanders, J. T. 607n24
- Sanders, L. 328n75, 337n130
- Sandnes, K. O. 261n1
- Sandt van de, H. 132n130, 261n1, 262n2, 293n70, 294n78, 340n152, 345n176, 416n20, 419n38, 422n48, 423, 487n103, 507n26, 508n31, 521n100, 524n111, 525n115, 527n117, 612n53
- Sartre, M. 559n2
- Saulnier, S. 266n22, 308n40, 523n110
- Schäfer, P. 8n2, 272n51, 276n64, 406, 406n53, 511n47, 511n48, 598n78, 632n50, 633n53, 651n147, 652, 652n151, 655
- Schaller, B. 292n63
- Schaper, J. 581n1
- Schechter, S. 68, 493n135, 531n137, 535n10, 650
- Schelkle, K. H. 369n95, 369n97, 383n1

- Scherer, J. 518n80
- Schiffman, L. H. 3n5, 3n6, 23, 24, 24n5, 24n10, 41n4, 46n26, 46n27, 55n65, 651n147
- Schimanowski, G. 53n55
- Schlier, H. 348n4, 357n38
- Schmithals, W. 353n30, 385n11, 411n1
- Schnackenburg, R. 308n41
- Schneider, G. 612n54, 617n75
- Schnelle, U. 308n41
- Scholem, G. 405, 406, 406n51, 407n57
- Schrage, W. 109n10, 338n133, 447n153, 447n156, 447n157, 643, 643n100
- Schram, T. L. 179n146
- Schreckenber, H. 534n4, 554n103, 572n43
- Schremer, A. 252n67, 276n66, 532n142, 632n50, 633n51, 634n56, 635n64, 652, 652n154, 653n155, 653n156, 653n160, 654n166, 657, 657n173, 657n174, 659n182, 661n194
- Schröder, B. 43n15
- Schubert, P. 326, 326n59
- Schuller, E. 438n128
- Schürer, E. 109n10, 149n24, 151n34, 151n34a, 151n35, 161n72, 198n47, 200n64, 216, 289, 289n43, 289n44, 376n127, 377n128, 502, 502n4, 510n44, 527n117, 536, 536n17, 542n43, 544n51, 544n54, 545n59, 553n98, 559, 559n2, 564n22, 572n49, 574n57, 576n67, 598n77, 609n37, 643, 643n101, 644n104
- Schüssler Fiorenza, E. 414n14, 448n158
- Schwabe, M. 152n38, 152n39, 320n22
- Schwartz, D. R. 122n78, 199, 199n53, 199n55, 204n78, 208–210, 208n87–91, 209n95, 210n99, 212, 212n104, 212n105, 213, 213n106, 436n115, 436n117, 450n172, 509, 509n38, 509n39, 511n47, 512n54, 533n1, 534, 535n10, 537, 537n19, 538, 541, 541n39, 548n73, 553n95, 556n112, 564n27, 573n56, 575n66, 583n10, 592n53
- Schwartz, J. vii, ix, xiv, 276n66, 501n*, 528n123, 532n142, 533n1, 541n36, 556n107, 559n4, 585n25, 601n91, 624n14, 632n50, 634n60, 635n62, 646n118, 660n189
- Schwartz, S. [R.] 42n9, 63n105, 209n93, 272n51, 503n10, 534, 535n9, 536n13, 537–540, 538n21–26, 540n32, 540n35, 541n37, 542n43, 543n44, 545, 545n60, 545n63, 546, 546n66, 556, 565n29, 625n17, 659n184, 659n185
- Schwartzbaum, H. 256n16
- Schweitzer, A. 23, 25, 348n7, 349n9, 349n11, 406, 406n52, 503, 503n7, 503n8, 588n38, 595n68
- Schwemer, A. M. 323n41
- Scott, J. M. 481n79
- Segal, A. F. 426n62, 653n157, 661n194
- Segal, M. H. 287n38
- Segal, M. Z. 82n52, 333n108
- Seland, T. 610n45
- Sevenster, J. vii
- Shahar, Y. 511n50
- Shaked, S. 5n19, 138n158
- Shemesh, A. 647n120
- Sheridan, R. 209n95, 219, 219n130, 639n86
- Sherwin-White, A. N. 550n85, 627n24, 628n32, 628n33, 629n34–36, 630n38, 630n40, 631, 631n42, 631n43, 631n46, 631n47
- Shutt, R. J. H. 109n9
- Sibinga, J. Smit vii
- Siegert, F. 41n3, 534, 534n4
- Sigal, P. 67n1, 73, 73n19, 78n34, 79n35, 80n43, 82n52, 82n55, 83n57, 88n75, 98n114
- Simon, M. 181n158, 183n162, 624n16, 642, 642n98
- Sivertsev, A. 556n112
- Sly, D. 433, 433n102, 433n103, 434n105
- Smallwood, E. M. 289n43, 322n30, 377n128, 379n139, 477n67, 513n59, 536n17, 544n56, 556n111, 557n116, 559, 559n2, 571n41, 605n15, 606n21
- Smith, D. R. 645n110
- Smith, M. ix n6, 7n1, 505n17, 535–539, 535n8, 535n9, 555, 574n57
- Snodgrass, K. R. 370, 370n102
- Snyder, G. F. 326n61

- Soards, M. L. 213, 214, 214n109, 214n110
- Soden von, H. F. 342n159, 342n164, 342n166
- Sokoloff, M. 5n14, 232n57, 494n139
- Solin, H. 147n19, 153n43
- Spanje van, T. E. 370n100
- Stagg, F. 468n38
- Stanton, G. N. 279n1, 280n2, 282n13, 283, 283n15, 294n74, 295n80, 514n62, 549n78, 623n9, 651n147
- Stein, R. H. 547n69
- Stemberger, G. 10n11, 15n34, 116n52, 117n59, 238n16, 272n55, 276n64, 393n2, 399, 399n25, 529n132, 588n40, 598n77, 632n48, 648n128, 651n147, 652n151
- Stendahl, K. vii, 229n39, 349, 349n9, 349n10, 350, 350n12, 350n13, 350n15, 350n17, 352, 352n23, 370, 372, 372n113, 372n115, 390, 390n35, 395, 395n10, 504, 504n13, 603n5
- Sterling, G. E. 43n10, 533, 533n3, 534, 535n7, 547, 547n68, 547n70, 547n71, 548n77, 563n17, 572n43, 604, 604n7, 604n10, 605n11, 615n65
- Stern, M. viii, 24n10, 42n7, 152n36a, 178n142, 180n151, 189n7, 198n47, 289n43, 376, 377n128, 559, 559n2, 573n54, 574, 574n57, 574n59, 574n61, 575n63, 576
- Stern, M. 13n**, 146n13, 147n19, 149n27, 149n28, 150n29, 381n148, 436n116, 436n117, 477n67, 506n22, 509n41, 510n42–44, 511n46, 511n47, 543n45, 543n48, 544n57, 571n41, 576n67, 626n21, 627n24–27
- Stern, S. 45n23, 46n28, 47n29, 47n31, 47n*
- Steu-del, A. 442n136
- Stevenson, K. W. 264n10
- Stöhr, M. viii n1
- Stolper, M. W. 5n16, 321n24
- Stowers, S. K. 353n33, 460n9
- Strack, H. L. 10n11, 116n53, 199n52, 243n35, 244n37, 246n47, 255n13, 256n14, 265n13, 265n17, 298n5, 333n104, 336n122, 345n177, 360n57, 388, 388n22, 389n26, 425n57, 515n65, 517n77, 518n80, 588n38, 617n75, 634n58, 642n99, 643n100, 653n160
- Strauss, D. F. 348n7
- Strecker, G. 282, 282n11, 282n13, 283, 288n42, 293, 293n67, 293n71, 294n74, 295n80, 514n62, 518n81, 518n85
- Streeter, B. H. 295n85
- Strobel, A. F. 246, 246n48, 246n49, 255n11, 257, 257n20, 258, 258n21
- Strugnell, J. 23, 23n4, 24n7, 24n11, 25n12, 204n75, 416n21, 613n57
- Stuckenbruck, L. T. 486n97
- Stuhlmacher, P. 351n20, 369n98, 370n101
- Sukenik, E. L. 107, 108, 108n2, 108n3, 114, 115, 116n51
- Sumney, J. L. 329n77, 454n184
- Sussman, Y. 23, 24, 24n5, 24n7, 24n10, 24n11, 25n12, 49n37, 613n57, 644n106
- Syme, R. 626, 626n19, 627n27, 630n39
- Sze Wing, C. 297n*
- Taatz, I. 21n*
- Tabori, J. D. 228n37
- Talmon, S. 46n26, 49n38
- Tannehill, R. 609n35, 612n53
- Tannenbaum, R. 286n31, 325n52, 345n182
- Tarn, W. W. 192n23
- Taylor, J. 209n95
- Taylor, A. J. P. 561
- Taylor, V. 610n40
- Tcherikover, V. 162n75
- Teppler, Y. 651n147, 653n157, 654n165
- Thackeray, H. S. J. 44n19, 49n37, 606n18
- Thatcher, T. 623n7, 624n12, 635n66
- Thiel, N. 193, 193n30, 194, 194n31, 196–199, 196n40, 197n43, 198n48, 199n51, 200n59
- Thiessen, M. 380, 380n144
- Thorsteinsson, R. M. 353n33, 380, 380n143
- Thraede, K. 630n41
- Thrall, M. 411n1, 448n159, 452n178, 460n12
- Tigchelaar, E. J. C. 417n28, 437n122, 442n137, 449n161

- Toeg, A. 78n29
 Tönges, E. 264n6
 Touloumakos, J. 323n38
 Tov, E. 189n8
 Treat, J. C. 238n13, 245n41
 Trebilco, P.[R.] 431, 431n92, 448n159,
 449n163, 450n168
 Trobisch, D. 24n6
 Tsafirir, Y. 510n42
 Tuckett, C.[M.] 223n*, 331n91
 Tuilier, A. 261n1
 Tyson, J. B. 607n24, 607n26

 Uchelen van, N. A. 4n7, 7n*, 149n25
 Ulrich, E. 79n37
 Unnik van, W. C. 547n69, 611n47
 Urbach, E. E. viii, 9n8, 12n21, 236n7,
 240n24, 252n64, 367n90, 427n66,
 427n67, 492n134, 535n10, 649n135,
 650n141, 652n152, 653n160, 660n189
 Ussishkin, D. 511n49

 Vanderhooff, D. S. 201n67
 Vahrenhorst, M. 3n1, 88n75, 102n126
 Van Belle, G. 309n42
 Van Canghai, J.-M. 226n24
 Vandecasteele-Vanneuville, F. 218
 Vandenberghe, M. J. 574n57
 VanderKam, J. C. 45n23, 45n24, 46n26,
 266n22, 439n130, 486n96, 486n100,
 523n107
 Vegge, I. 460n12
 Verbrugge, V. L. 459n6, 463n24, 467n37,
 469n41, 470n46, 473n55
 Verheyden, J. xiv, 235n1, 603n1
 Verme del, M. 261n1, 521n100
 Vermes, G. 42n9, 54n63, 59n87, 60n91,
 63n106, 84n63, 216, 502n4, 503n8
 Vielhauer, P. 323n41, 394, 394n4-6,
 395n8, 400, 444n140, 444n142,
 635n66, 636n69, 646n115
 Vogel, M. 534n4
 Vogt, F. 71, 102n123, 102n125
 Vouga, F. 445n148
 Vries de, B. 5n13, 6n21

 Wahlde von, U. C. 179n146, 179n147,
 218

 Wald, S. G. 529n133, 587n35
 Wallace, D. B. 468n38
 Wallace-Hadrill, A. 323n38
 Walter, N. 103n131
 Walters, J. C. 557n115
 Wan, S.-K. 459n6, 470n46, 475n59
 Wassen, C. 84n64, 438n125, 438n127,
 438n128, 449n161
 Waubke, H.-G. 279n1
 Weber, F. 502
 Wedderburn, A. J. M. 459n6, 460n10,
 467n37, 468n40, 476n61, 476n63,
 476n64, 477n66, 477n68, 478n72,
 478n73, 479n76
 Weigle, L. A. 617n76
 Weikert, C. 510n42, 511n45, 511n47,
 542n40, 542n43, 556n110, 658n181
 Weima, J. A. D. 325n54
 Weinfeld, M. 78n32
 Weinreich, M. 142n4
 Weiss, H. 43n15
 Wendland, P. 63n105
 Wengst, K. 261n1, 440n133, 507n25,
 509n34-37, 512n56, 513n57, 513n58,
 514n61, 521n100, 522n101
 Wenham, D. 326n61, 331n91
 Wermelinger, O. 349n8
 Westbrook, R. 73, 75, 77-79, 77n26,
 77n27, 78n29, 78n32, 79n39
 Wettstein, J. J. 617n75
 Weyl, H. 44
 White, H. 626n19
 White, J. L. 324n43, 326n62, 328n73,
 329n77, 334n110, 343n167
 White, M. C. 178n141, 189n9, 636n69
 Whitton, J. 332n100
 Wiefel, W. 381n149
 Wieringen van, A. L. H. M. 393n1
 Wilckens, U. 355, 388n22
 Wilk, F. 261n1, 279n1, 283n15, 285n27
 Wilker, J. 541n36, 542n40, 542n43,
 543n46, 545n61, 555n106, 556n108
 Williams, M. H. 187, 187n2, 193, 195,
 195n35, 197, 197n42, 210, 539, 540,
 540n31
 Williams, W. 629n35, 629n36, 630n41
 Wilson, S. 187n1, 193, 193n29, 661n194
 Wilson, W. 133n137

- Windisch, H. 413n6, 413n7, 413n9,
 470n47
 Windsor, L.J. 577n73a
 Winsor, R. 249n54
 Winston, D. 318n10
 Wise, M.O. 228n37
 Witherington, B. 102n126
 Wolff, H.J. 93n97
 Woolf, J. 119n66
 Wrede, W. 349n11, 407, 407n59
 Wright, B.G. 108n4, 127n105
 Wright, R.B. 358n46
 Wuillemier, P. 626n21, 627n23, 628n30
 Wurst, G. 349n8

 Yadin, Y. 151n35, 152n36, 166n93–95,
 167n99, 168n100, 168n103, 197n41
 Yardeni, A. 80n43, 80n45, 135n12
 Yeboah, B. 91n88
 Yoshiko Reed, A. 209n95
 Young, R.A. 468n38

 Zahn, T. 634n58
 Zakovitch, Y. 78n29
 Zangenberg, J. 262n2, 508n31
 Zehnacker, H. 629n34, 629n35, 630n41,
 631n42, 631n44
 Zeitlin, S. 12n21, 166n95, 192, 192n24,
 529n132
 Zetterholm, M. 280n3, 295n82, 585n24,
 586n27
 Ziegler, J. 81n48
 Ziesler, J.A. 607n23
 Zimmermann, R. 245n42, 246n46,
 250n62, 255n13
 Zissu, B. xiv, 202n68, 511n45, 511n50
 Zmijewski, J. 617n75
 Zohar, N. 85n65, 632n50
 Zuckerman, M.S. 633n52
 Zunz, L. 3n1
 Zwingli, U. 102n123

Index of Subjects and Significant Place Names

- Abortion 60, 60n94, 522
- Aggada 3, 3n4, 11, 30, 163n79, 169n109, 257, 434n111, 587, 595, 596, 598
- Achaia 323, 344, 344n173, 459, 464, 472, 473, 478, 481, 481n81, 548
- Adultery 56, 61, 71–74, 82, 83, 88n73, 88n76, 95, 96, 98–100, 98n115, 101n21, 101n22, 102n126, 104, 381, 382, 386, 387, 423, 630
- Aelia Capitolina (Jerusalem) 510, 510n42, 511n45, 511n47, 513, 530, 542n40, 542n43, 556n110, 658n181
- Akkadian 5, 5n16
- Alexandria 34n42, 39, 39n64, 41, 44, 44n16, 45n20, 45n22, 56n72, 57n73–75, 57n77, 58n82, 59n86, 60n92, 61n99, 62–65, 62n103, 63n105, 64n111, 64n112, 65n117, 81, 109, 112, 112n25, 114, 114n40, 125, 147n19, 153, 153n42, 156, 158, 159, 159n59, 159n66, 161, 165, 202, 202n70, 204, 205, 217, 217n122, 322, 434, 440, 532, 540, 610n44, 658
- Allegorise, Allegorisation 112, 159n66, 253n2, 255, 280, 280n4, 281, 413
- Allegory, Allegorical 135, 202, 235, 238, 240, 245, 246n48, 253, 255n12, 255n13, 258, 383, 383n1, 413, 414, 439n130, 453, 453n180, 473, 513532, 595, 596
- Alms(giving) 233n59, 262, 267, 293, 341, 355, 457, 464, 469n45, 515, 516, 520, 550
- Amida (see also Prayer) 265n13, 268
- Amora (interpreter) 35
- Amoraim, Amoraic period 10, 28, 29, 34, 36, 38–40, 129, 136, 163, 269n38, 464, 492, 643, 643n103, 649, 650
- Amoraic midrash 122, 169, 170, 173, 181n154, 193, 491–495, 492n128, 492n133
- Antioch (Syrian) 109n11, 114n40, 180, 184, 290, 294n77, 295, 295n82, 295n85, 296, 321, 348n7, 369n98, 375, 376, 378, 397, 464, 466, 466n34, 467, 475, 477, 478, 480, 483, 531, 548, 550, 552n93, 569–571, 574n57, 577n73, 660
- Antiochene 177n138, 185, 295, 323n41, 371, 375, 477
- Aphrodisias 286n31, 325, 345
- Apocalyptic(ism) (see also Dualism) 4, 4n8, 23, 121, 122n77, 131n148, 157, 158, 183, 216, 217, 229n46, 239, 240, 242, 245, 318, 318n10, 325, 326, 326n61, 329, 331, 336n126, 337, 356, 388n20, 390, 405–409, 411, 414–416, 418, 423, 424, 426, 426n65, 427, 440, 441, 443, 445n148, 447, 448, 450–456, 451n147, 460, 484–486, 503n7, 547n68, 587, 591, 596, 597, 600, 645, 645n110
- Apologetic 42, 43, 43n10, 43n15, 58, 62n103, 63–65, 64n111, 65n117, 148, 160, 160n71, 161, 208, 378, 455n190, 533–535, 539, 540, 547, 553, 554, 566583, 604, 605, 609, 612, 614, 615, 618, 637n75
- Apostle(s) 26, 27, 103, 104, 131, 134, 137, 217, 230, 233, 281, 326, 327, 331, 331n90, 337, 344, 347–349, 348n5, 353, 364n67, 370–372, 376, 378, 395–397, 404, 405, 408n61, 409, 450, 451, 454–456, 455n187, 462, 465, 467, 471n50, 475, 477, 478, 481–483, 495, 528n125, 548–555, 566, 567, 569, 570, 577, 579, 588, 593n57, 609, 615, 638n79, 646, 656

- Apostles' decree 26n17, 27, 98n112, 133, 134n142, 324, 334, 334n112, 335, 357n39
- Apostolic tradition 40, 95, 131–132, 132n127, 134, 134n139, 134n140, 137n153, 232, 236, 330, 373–375, 389, 390, 399n30, 403, 409n66, 422n54, 487n103, 508
- Apostolate, (com)mission 26, 35, 131, 230, 232, 280, 287, 331, 344, 366, 371, 394, 465, 467, 480, 483, 567, 577, 645
- Aposynagōgos* (excommunicated) 624n11, 637n74
- Arab/Arabic 115n49, 142, 147, 168n103, 170n116, 207
- Aramaic 5, 5n14, 5n16, 5n17, 5n19, 6n20, 30, 33, 33n38, 35, 49n37, 86, 128, 128n109, 142, 145, 147n18, 148, 149, 149n24, 153, 154, 154n47, 156n53, 162, 165, 166, 166n94, 168, 168n101, 168n103, 170, 170n116, 172–174, 181n154, 188, 188n6, 190, 190n13, 199, 199n52, 199n53, 200, 201, 229n40, 232n57, 241, 243, 245, 263, 264, 264n8, 287n38, 318–321, 318n8, 320n20, 320n22, 328, 334, 335n114, 345n179, 361n59, 362n61, 367, 367n90, 389, 422, 430n88, 449n161, 454, 484–486, 494, 494n139, 517, 599, 611
- ~ papyri (Elephantine) 70, 77n27, 80, 82n55, 145, 147n18, 150n32, 151, 154, 201
- Aramean 147, 170n112, 172, 173, 175, 583n13
- Archaeology, arch(aeological) 32, 42, 72, 78, 107, 108, 108n2, 110, 111, 114, 115n47, 115n48, 117n58, 119, 125, 133n133, 135, 154, 157, 158, 166, 168, 174, 202n68, 286, 290, 429, 436, 464n27, 510n42, 511, 511n45, 511n49, 540
- Archives 5n16, 31, 35, 35n44, 148, 152n36, 166, 167, 168n103, 194, 197, 198, 217n123, 512, 512n52
- Asia Minor 108, 124, 192, 279, 320, 320n18, 325, 376, 431, 457, 478, 548, 569, 570, 645, 660
- Aside (narrator's, in John) 189, 300, 301, 307, 636, 636n71
- Assyrian 145, 145n10, 191, 201
- Athens 319n11, 323, 324, 324n48, 544n54, 560, 640
- Babylonia 21n*, 28–31, 35–37, 39n64, 129, 133, 145, 147, 147n19, 173n133, 191, 196, 198n49, 321n23, 457, 604
- Babylonian
- ~ halakha/tradition 5n17, 14n29, 28–31, 33–40, 36n47, 54n61, 116, 118, 122–124, 127, 129, 136, 136n50, 143n7, 163n79, 169n109, 171, 173–175, 188, 196, 197n41, 205, 268, 426, 430, 431, 494n139, 529, 529n132, 633, 634n57, 635, 643, 643n102, 649, 650, 650n136
- Baptism 111, 131–134, 131n24, 137, 147n19, 214, 228–230, 232, 266, 336n127, 407, 408, 445n148, 488, 522, 588, 608
- Bar Kokhba, see Revolt under Hadrian
- Bath house, public (see also Mikve) 111, 111n23, 114, 124, 129, 136, 148
- Beatitude(s) 226, 226n4, 226n25, 232, 424, 473
- Beit midrash, see House of learning
- Benedictions, Eighteen (see Source Index, Rabbinic texts)
- Birkat ha-minim* 269, 270n43, 272n54, 275, 275n62, 276, 276n64, 276n67, 290, 302, 528n122, 532n140, 621, 623, 624, 624n12, 634n56, 634n57, 640n88, 641n93, 642, 642n96, 643, 643n102, 650–652, 651n147, 651n148, 652n150, 652n151, 652n153, 655, 656
- Boethus, Boethusians, see List of ancient names
- Byzantine period, emperor 13n26, 34, 115, 150, 150n31, 150n32, 484, 494, 517
- Caesaraea (Maritima) 320n21
- Caesaraea Philippi 544, 545, 549, 550, 552, 553
- Calendar (lunar, solar) 24, 34, 40, 45–48, 45n23, 46n26–28, 47n29, 47n31, 47n*, 49n38, 50–51, 56, 266, 266n22, 274,

- 293n70, 308n40, 352n27, 505n21, 523, 523n107, 527, 605n15
 intercalation 31, 33, 33n38, 46, 47n29, 148n22, 583n13
- Canon (scriptural), Canonical 225, 235, 240, 251, 261, 277, 290, 375n124, 393, 445, 486, 508, 509, 588n39
- Christology, Christological 236n6, 250, 250n62, 251, 259, 305n28, 322n33, 328n75, 348, 348n6, 400, 400n34, 407–409, 407n59, 514, 522n101, 596, 621, 622
- Circumcision 40, 103, 104, 104n135, 116, 146, 155, 181, 183n162, 225, 237n10, 270n46, 289, 299, 300, 302–307, 304n26, 304n27, 305n31, 309–312, 324, 347, 352, 353n28, 364, 365n76, 366, 368, 372, 376, 378, 380, 380n142, 380n144, 396, 437n124, 502n2, 510–512, 521n99, 550, 553, 559, 566, 575–577, 575n66, 576n67, 578, 588n139
 Gospel of the ~ 27, 366, 367, 371–374, 379, 380, 391, 396, 397, 445, 454, 465, 466, 567–570, 577, 579, 588, 594n63
- Conflict, of Jews and Christians ('parting of the ways') 22, 67, 69, 103, 176n134, 179, 180, 181n58, 193n27, 194n31, 215, 216, 236, 252n67, 276n65, 276n66, 276n69, 277, 283, 290n53, 295, 302, 308, 311, 313, 501–502, 503n9, 509n40, 513n57, 525, 526, 530–532, 530n134, 532n140, 532n142, 571, 585, 585n25, 586, 601, 621–624, 622n2, 622n4, 624n12, 626, 632n50, 633n51, 634n56, 634n60, 635n64, 641, 648–652, 652n150, 652n154, 653n155, 653n156, 653n160, 654n166, 655–661, 657n173, 657n174, 659n182, 660n188, 619n79, 621ff
- Contract 21, 80, 80n46, 102, 144, 148, 152, 164, 167, 197, 197n41, 198, 200, 205, 456, 511n48
- Corinth 26, 40, 94, 107n1, 153, 153n44, 324, 337, 376, 381, 450, 451n173, 462, 465, 470, 472, 481, 482, 484, 579, 594
- Cynic (see also Stoic) 58n81, 326, 336, 336n125, 363, 394
- Danielic (see also Enochic) 485, 486n99, 490
- Dead Sea scrolls, see Qumran documents
- Death penalty 56, 57, 57n74, 60–62, 82, 83, 88, 302, 302n15, 306, 345n178
- Decrees, Eighteen ~ 10–13, 14n28, 20, 164n86, 377, 428, 606
- Diaspora 33n38, 34, 39, 39n64, 44, 107–110, 107n1, 108n2, 108n3, 112–115, 113n37, 114n43, 115n81, 124, 124n84, 128, 135, 136, 145, 146, 148, 152, 156, 174, 188, 195n33, 198n47, 204n78, 208, 208n86, 212n104, 215n113, 230, 285n27, 290, 318, 319, 321, 322, 345, 364n74, 365, 376, 378, 379n139, 458, 470, 475, 480, 483, 567, 578, 609n35, 610–612, 610n43, 646
 halakha in ~ 107n1, 109, 110, 112–115
- Disputes, Schools ~ (of Shammai and Hillel) 11, 12n23, 20n54, 25, 42, 54, 55, 69, 75, 85–90, 89n80, 98, 101, 110, 211n100, 269–270, 377, 426, 427, 525, 530, 591n51, 593n59, 617, 647
- Divorce (see also Marriage) *passim*
 ~ law/halakha 53n57, 67–102, 103, 104
 ~ bill 77, 78, 80, 81, 85, 86, 93, 96–99, 163–168, 388, 389
 hate ~ 74, 75, 77, 77n27, 78n29, 79–82, 87
 grounds for ~ 69, 75, 78, 78n29, 82n54, 88–91, 98–102, 102n126, 102n129, 165, 306, 389
 exception clause 68, 69, 71, 72, 76, 90, 98n115, 99, 102, 102n126, 102n127, 292, 293
- Dualism, dualist(ic) 23, 121, 326, 326n61, 356, 411, 413–427, 417n23, 417n24, 417n27, 421n43, 422n51, 422n54, 435, 439–441, 443, 450–453, 455, 456, 460, 590, 591, 597, 600
- Editing (process) 11, 24, 104, 163n81, 178, 178n141, 188, 190, 192, 207, 239, 241, 242, 244, 245, 250, 251, 254, 255, 267, 268, 272, 273, 280, 282, 285, 292, 292n58, 303, 307, 313, 395, 430, 492, 505, 506, 514, 520, 526, 529, 533, 582,

- 624, 632, 632n48, 635–637, 637n75,
639–641, 652, 655, 657, 660
- Edomite (cf Idumaeae) 128n108, 196,
197n41
- Egyptian 47, 63, 64n112, 65, 73, 80,
82, 92, 114, 123, 146, 147n19, 150,
150n31, 156, 198, 198n46, 204–207,
211, 340n145, 474n57, 533, 545n63,
570, 571, 573, 574, 624, 645n108, 658
- Eighteen Benedictions, see Source index,
Rabbinic texts
- Ekklesiá* 252n***, 323, 433, 445n149,
447–449, 448n159, 449n162, 488
- Election (of Israel) 182, 231, 236, 245,
250, 372, 378, 416–417, 421, 455, 487,
621
- Enoch(ic) tradition 486, 486n97, 486n99,
487, 490
- Essenes (see also Qumran) 24, 24n10, 25,
42, 42n5, 46, 55, 56, 59, 60, 62, 64, 65,
65n115, 68, 97, 98, 128, 128n111, 158,
284, 292, 293, 293n70, 302, 302n17,
319, 340, 340n151, 340n152, 388,
403, 408, 408n60, 416, 417, 417n24,
419, 420, 421n43, 422n48, 425, 428,
434–436, 436n113, 436n117, 437–441,
437n120, 437n121, 437n123, 438n127,
438n128, 449, 451n175, 470n46, 480,
505, 520, 523, 573, 586, 605, 644,
644n106
- Eucharist 27, 233n59, 522, 522n101
- Evangelical 102, 102n126
- Excommunicate (see also *aposynagōgos*)
276, 301, 626, 635, 638, 638n79, 639,
641–644, 650, 655
- Excommunication 230n49, 277, 293,
302, 532n40, 601, 621, 624, 625,
637n72, 638, 639, 642–644, 646, 647,
649, 651, 656, 659
- Fasting 47, 137, 162, 244, 245n43, 262,
266, 267, 274–276, 293, 293n70, 464,
464n28, 516, 520, 522–524, 523n109,
526, 527, 527n117
- Fiscus judaicus, ‘Jewish tax’ 477,
477n67, 482, 502n2, 556, 609, 658,
658n181
- Food (dietary) laws, *kashrut* 31,
121–123, 121n74, 133, 352, 353n28,
364, 365n76, 512, 519, 593
- Form criticism, Form-critical 502, 504,
504n14, 505, 505n18, 547n69, 616
- Fourth philosophy (Josephus) 53, 216,
378n138, 565, 566, 572–574, 574n57,
577n70, 577n73, 578, 606, 606n18
- Friday (fast/festival day) 11, 46, 266,
274, 293n70, 365n75, 522, 523, 526,
527
- Galilee 31, 33n38, 129, 133n133,
180n149, 218, 259, 296, 544, 562, 574,
576, 633
- Galilean 179, 180n149, 544, 552, 559
- Gentile 12–13, 68, 94n100, 108, 113,
121, 121n71, 121n72, 123–124,
146n13, 160n71, 164, 164n86, 167,
168, 172, 173, 177, 184, 194, 196, 200,
286, 287n34, 288, 289, 335, 347, 361,
377, 382, 418, 418n34, 428, 441, 475,
516, 521n97, 523n106, 547, 553, 575,
577, 592n54, 645, 654, 655
~ Christians, ~ churches 27, 40, 68,
93, 101, 103–105, 132–134, 137, 181,
182, 183n162, 184, 185, 215, 241, 267,
279–286, 282n13, 285n27, 290, 291,
293, 293n70, 295, 295n80, 295n84,
296, 325, 325n53, 353n28, 364n71,
365, 367, 370–376, 378–382, 385,
385n13, 387, 390, 397, 445, 453n180,
455, 465–467, 470, 472–479, 481–483,
495, 510, 512–514, 521, 525, 531, 549,
550, 553, 568–571, 577–579, 593n57,
594, 594n63, 603n5, 645n113
- God-fearer, God-fearing 169, 180, 184,
185, 286, 286n31, 324, 325, 325n52,
345n182, 373, 374, 450n168, 553
- Golan 147n19, 574
- Graeco-Roman (law/custom) 43, 111,
120, 123, 125–127, 128n108, 132, 136,
137, 142, 149, 167, 197n41, 202, 203,
206, 208, 256, 257, 322, 393, 399, 408,
447, 575, 644–645, 644n105
- Graeco-Roman (world/period) 110, 207,
379n140, 382, 394, 398, 400, 448n159,
470, 484, 589, 645n108

- Greece 107, 191n20, 320, 418n31, 457, 485, 645
- Greek *passim*
- ~ language 27, 35, 41, 41n1, 82n55, 109, 111, 117, 127n105, 145n11, 146, 148–151, 148n21, 149n24, 153, 155–157, 159, 159n66, 161, 168n103, 190, 199, 203, 204, 209, 223–224, 238, 238n13, 241, 243, 252***, 257, 268, 318–322, 320n19–22, 329, 329n77, 332–335, 333n104, 339, 340, 342, 353, 358, 360, 362, 363n64, 440, 448n159, 467, 468n38, 470, 484, 488, 518, 531, 531n138, 551, 599, 611n50, 660, 660n190
 - ~ ethnos 65n114, 167, 173n129, 175, 181, 320n18, 343, 357, 418, 561
- Greek-Jewish (Graeco-Jewish)
- ~ literature and culture 26, 27, 72, 107, 123n79, 128n109, 152, 156n53, 180n151, 200, 205, 210n96, 224n12, 300n11, 320, 321, 321n29, 328n76, 330n85, 343, 343n170, 354, 354n34, 363, 365, 394, 422, 442, 443, 452, 604n9
 - ~ philosophy 58, 335n114, 398, 446
- Halakha (see also System) *passim*
- ~ formulated in Greek 27
 - ~ and community 9, 21, 328
 - ~ in the New Testament 27, 67, 69, 70, 73, 73n19, 92n93, 96, 103n**, 421n42, 549n82, 597
 - ancient ~ 6, 23, 90, 91, 119n61, 167n97, 517n77
 - history of ~ 3, 8n2, 9n8, 10, 24n7, 24n10, 27, 38, 69, 97n111, 503n12
 - Halakhic letter, see Index of sources
- Hands, purity of 8, 9, 15–18, 15n32, 15n33, 17n39, 17n40, 17n43, 18n45, 18n46, 125, 125n90, 126n94, 127, 128, 133, 134, 138, 236
- washing of ~ 17n39, 109, 109n8, 109n9, 109n11, 111, 115n48, 123n81, 125, 126, 126n96, 134, 134n139, 136, 137
- Hanukka 156, 199, 199n56
- Hasmonaeon, see Index of Ancient names
- Hate, see divorce
- Hebrew (ethnonym) 142n4, 144, 149, 149n25, 149n28, 150, 150n32, 153–155, 153n46, 156n54, 157–162, 157n55, 160n67–71, 166n95, 179n146, 181n158a, 192, 192n24, 192n25, 212
- ~ language 4n6, 5n13, 6n20, 11n16, 35, 41, 81, 82, 98, 115n49, 126n96, 128, 132, 142n4, 142n6, 144, 148, 148n21, 149, 149n24, 151, 153, 155, 156n54, 159, 159n63, 162, 164, 166, 168, 168n100, 168n101, 170, 182n161, 187–188, 188n4, 190, 197n41, 200, 201, 224, 224n13, 226, 237, 238, 241, 264, 268, 269n38, 287n38, 318–320, 320n20, 321n25, 327n71, 358, 360, 361n59, 367, 430, 430n88, 449n165, 454, 487, 491, 494n139, 596–597, 599, 611
 - ~ script (ancient) 151, 151n34, 168, 249
- Hellene 147, 167, 174, 210, 530
- Hellenism, Hellenistic (see also Greek)
- 5n15, 15n38, 22, 23, 43, 64, 72, 93, 93n97, 97, 107, 108n2, 109124n83, 136n151, 146, 148, 149, 149n24, 152n36a, 156, 156n53, 159n66, 161, 162n75, 173n129, 181n154, 192, 192n22, 192n23, 198, 198n46, 200, 201, 204, 205, 207, 211, 211n102, 215, 223, 254, 256, 257, 286n30, 317, 318, 318n7, 318n10, 321, 321n25, 322, 322n33, 325–331, 326n62, 327n63, 327n64, 327n67, 328n72, 328n74–76, 329n80, 330n84, 334, 334n111, 335, 337–344, 337n130, 337n131, 343n171, 346, 348, 354, 358, 374n121, 374n123, 386, 396, 398, 398n22, 400n33, 403, 409, 418n31, 422, 440, 449n163, 454n184, 454n185, 462, 464n27, 533, 535, 540n35, 546, 551, 570n40, 594, 599, 604, 604n9, 609n35, 610, 611n47, 615, 615n66, 658, 660n190
- Helleno-centrism 192, 318
- Herodian (see also Index of Ancient names) 238, 288n41, 302n15, 519, 538, 545, 547, 553, 559n98, 563, 577
- Herodium 114, 577n70

- High (Chief) priest 13, 24, 36, 47,
113n32, 151, 156, 159, 178, 178n142,
204, 205, 266n20, 286n29, 288, 294,
317n2, 491, 519, 538, 540, 545,
548n73, 549, 549n81, 552, 553,
555, 565, 574, 574n58, 575n62, 576,
600n86, 604n6, 609–611, 611n48,
611n50, 612n51, 613, 613n55, 615,
615n65, 639
- Hillel, School of 11, 12, 12n23, 17,
17n42, 18, 20n54, 25, 42, 53–56, 69,
70, 75, 85, 89, 100, 101, 110, 127, 270,
319, 377, 388, 389, 425–428, 428n72,
428n73, 434n104, 441, 449, 452, 483,
519, 525, 591, 591n51, 592, 592n54,
593, 593n59, 594, 597, 598, 598n75,
600, 605, 606, 606n21, 614–617,
616n74, 619n79, 647–649
- Historical criticism 7, 7n1, 8, 21n1,
22, 23, 297, 348–350, 396n13, 502,
505n19, 533n1
- Historiography 43n10, 155n52, 156n54,
198n48, 318n7, 503n10, 533n3, 535n7,
547, 547n68, 547n70, 547n71, 548n77,
561n12, 563n17, 572n43, 603n5, 604,
604n7, 604n10, 615n65
Greek/Hellenistic ~ 43n10, 148, 161,
210, 210n96, 213, 533, 604, 604n9, 615
Jewish ~ 148, 210, 210n96, 319, 506,
506n24, 533, 604n9
modern ~ 502–503, 535n9, 539
- House of learning/Beit midrash 126n98,
127, 148, 157, 272
- Hypocrites (Pharisees) 266, 267, 274,
293, 293n68, 295, 515, 515n70, 516,
522–524, 526, 527, 608, 608n31
- Idolatry 26, 27, 59, 137, 146, 164, 168,
169, 171n120, 284n21, 287n34, 357,
362, 381, 382, 411, 428, 455, 576, 577,
592, 632, 633
- Idols, food offered to 26, 27, 133, 134,
404, 418n34, 479, 570, 593
- Idum(a)ean (cf Edomite) 377, 576,
576n67
- Infancy story 514, 551, 607, 607n26
- Intercalation, see Calendar
- Ioudaios* 145–150, 187–220
- Ioudaïsmos* (see also *Judaize*) 207
- Jerusalem *passim*
- Jerusalem church 27, 103, 104, 322, 344,
348n7, 371n105, 377n106, 377n128,
378, 380, 409, 409n66, 437, 449n163,
454n185, 455, 455n187, 457, 458, 462,
464–467, 465n33, 470–481, 473n54,
483, 484, 484n86, 485n92, 486n95,
487n101, 488, 490, 490n123, 491,
494–496, 567, 569, 577, 610
- Jerusalemite 53, 178, 212n105, 213, 214
- Jesus (see also Index of Ancient names)
- authority of ~ 27, 92, 100, 103, 225,
230, 287, 331n90, 386, 402, 403, 405,
520, 598, 638
historical ~ 96, 223, 232, 401, 503,
624n11
~ tradition 51n50, 67–70, 95, 100,
101, 103–105, 133n135, 137, 237,
241, 243, 251, 258, 259, 267n26, 284,
287, 288, 291, 292, 292n62, 296, 308,
309, 312, 313, 358, 374, 378n137, 387,
390, 399n29, 400, 400n32, 400n34,
401–405, 401n35, 408–410, 408n61,
415, 424, 432–433, 462, 491, 503, 514,
516, 518, 522, 523, 523n105, 526
- Jewish-Christian
- ~ relations 26, 67, 68n2, 220, 261, 277,
312, 503, 506, 509n34, 509n40, 513,
514, 525, 530, 622, 634, 635, 650, 657,
661
~ tradition, custom 6, 26, 27, 178,
178n141, 183–185, 219, 233, 237, 251,
280–283, 285, 288n42, 292, 293, 302,
346, 354, 355, 365–367, 378, 379, 415,
447, 452, 462, 471, 489, 490, 515, 523,
645, 655
~ group, community 103, 176,
179n143, 180, 282, 290, 295, 296,
302, 309, 312n54, 371, 378, 447, 462,
472–475, 481, 482, 496, 514, 518n86,
531, 652
- Johannine community 310, 312, 313,
532n141, 623, 623n10, 624, 635,
635n68, 659, 660n188
- Judaize, Judaizing (*ioudaizein*) 40, 185,
288n42, 296, 371, 375, 378–380, 396,

- 445, 462, 466, 472, 475n59, 482, 484, 521, 531, 568, 594n63
- Judaea (Roman province; see also Yehud) 44n17, 115, 195n33, 207, 208, 211n102, 212n104, 213, 216n117, 217, 218, 276, 296, 377, 377n128, 378, 380–382, 396n14, 397, 397n17, 447, 449n163, 450, 458, 465, 466, 474, 475, 477, 478, 481–484, 483n84, 494, 510, 511n45, 532, 534, 534n6, 537, 538, 544, 546, 550, 556, 556n110, 559, 559n4, 560, 561, 563, 566–571, 571n42, 574, 578, 578n76, 627, 627n24, 660, 661n193
- Judah (patriarch, tribe, biblical region, kingdom) 145, 147, 158n58, 201, 362, 422, 423, 521, 595
- Judea (region) 115, 133n133, 146n13, 149, 155, 168n100, 180n149, 192n22, 199, 201n67, 202n68, 207, 215, 218, 259, 299, 372, 375n126, 376–378, 380, 381, 560
- Judean (geographical-political) 65n117, 145, 146n15, 207–211, 211n101, 214, 216–218, 324, 326, 420, 511, 512, 537, 538, 553, 559, 562, 575, 576, 578
- Jupiter temple (Jerusalem) 477, 482, 510, 510n42, 513, 530
- Ketuba* 77, 77n28, 80n46, 90, 164–167, 166n92, 166n94, 197, 200
- Kingdom of God 131, 225, 232, 250, 294, 348, 407, 521
 ~ of Heaven 117, 226, 230–232, 243, 246, 255, 292, 312, 433, 433n101, 515
- Land of Israel (Palestine) 30, 31, 33, 35, 39, 39n64, 44, 103, 107, 108n2, 109, 110, 114, 115, 124, 127n105, 129, 135, 136, 138, 146, 149, 153, 166, 168n103, 173, 173n131, 174, 192n25, 290, 319, 320, 437, 464, 530, 535, 649, 650, 660n190
 halakha in ~ 28, 35n44, 503
 tradition of ~ 108, 112
- Law *passim*
 giving of ~ at Sinai 4n12, 147, 365, 429, 433, 434
 ~ in Paul 22, 25, 103, 313, 323, 324, 324n49, 326n58, 327, 347–391, 397, 403, 415n16, 462, 475, 502n3, 568, 570, 571, 594n63, 597
 observance of ~ 313, 352, 353n28, 361–364, 367, 369, 370, 374, 375, 397, 420, 462, 478, 479n75, 483
 ‘works’ of ~ 24, 352, 352n27, 353n28, 363, 364, 367–369, 367n90, 368n91, 374, 375, 382, 594n63, 600
- Levitical, see Purity
- Lod 528n123, 556n107
- Lord’s Prayer 233, 261, 261n1, 263, 264n10, 261–277, 292, 292n61, 293n70, 507, 508, 516, 522, 523n106, 524, 593
- Love, of neighbour 91, 91n89, 336
- Macedonia 108, 217, 322–325, 324n44, 343, 344, 344n173, 459, 473, 478, 481
- Macedonian 47, 47n*, 198, 198n47, 202n70, 469, 470, 476
- Market 89, 90, 148, 527n117, 593, 632, 653
- Marriage (see also Divorce) 27, 44, 59, 60, 65, 72–76, 77n26, 78, 78n29, 78n31, 80, 80n46, 81, 82n55, 83–85, 84n60, 86, 87, 88n73, 91n89, 92–95, 98, 115, 100–103, 102n127, 105, 134, 164, 165, 166n92, 167, 171n118, 174, 175, 193, 197, 197n41, 240, 246, 319, 331, 332n100, 335, 382n1, 386–390, 389n31, 402, 403, 402n42, 413, 414n11, 434, 436–438, 444, 453, 488n110, 593, 648
 ~ law 59, 82n55, 102, 387, 388, 390
- Marital relations 27, 59–60, 92, 112, 134, 137, 335
- Matrimonial formulae 69, 152, 165–168, 165n189, 166n92, 168n100, 196, 491
- Matthaean church, community 69, 73, 76, 102n127, 104, 274, 275, 282, 282n13, 283, 290n53, 291, 293–294, 295n79, 518n86, 531, 655
- Messiah 27, 182n161, 228, 239, 241n29, 241n30, 249n54, 249n58, 260n25,

- 267, 296, 301, 308, 407, 443, 454, 466, 487n102, 546, 574n60, 636, 638
- Messianic 143, 227–229, 228n37, 231, 232, 260n25, 309, 310, 348n6, 407n59, 443, 573, 574, 615
- Metaphor(ical) 79, 87, 93, 94, 123, 250n62, 252, 332, 334n109, 335, 342, 386–388, 390, 390n32, 390n33, 416, 444n142, 455, 466n34, 496n144, 655, 661
- Midrash 4, 9n8, 11, 33, 37, 61n99, 62, 75, 89–92, 89n79, 101, 115, 118, 122, 126n98, 168, 169, 170n115, 171, 182n159, 188, 193, 236–241, 236n4, 236n5, 238n14, 239n21, 240n28, 241n30, 243, 244n36, 245–247, 246n49, 249n59, 249n60, 250, 251, 253–255, 257–260, 258n23, 264n7, 297, 301, 303–307, 304n23–25, 309–312, 317, 320n18, 363, 365, 365n77, 367n90, 377n133, 407, 429, 430, 439n130, 439n131, 440, 491–494, 492n133, 496, 587, 587n34, 587n36, 588n40, 589n44, 590, 590n46, 596, 596n74, 598, 611n50, 618n78, 635, 635n63, 642
- Mikva, mikvaot (ritual bath; see also Bath house) 108, 108n4, 112, 115, 127, 115n47–48, 123, 124, 128, 133n133
- Mishna (see Index of sources)
redaction/writing of ~ 4n11, 7, 10, 14, 14n29, 17, 20, 28, 30, 35n44, 90, 92, 116n52, 120, 136, 163–164, 272, 291, 398, 504n16, 599, 600, 616, 632, 632n48
- Monday (fast/festival day) 266, 274, 275, 523, 526, 527
- Multiform (~ Judaism, Pharisaism) 6, 110, 116, 120, 130, 138, 268, 303, 613, 646
- Mysticism, mystical 9, 23, 91, 93, 100, 236, 238, 240, 245, 250, 259, 321, 393, 400, 405–409, 407n57, 408n60, 487n104, 595
- Nabataean 152n36, 166, 168n103
- Near Eastern law, Ancient 69, 71, 73, 75, 77, 86, 100
- Nineteenth century (scholarship) 3, 4, 21, 39, 261, 281, 291, 352n25, 372n115, 393, 401, 437, 462, 501, 504, 526, 586
- Nisibis 33, 34, 36n47, 126, 136
- Noah (see Index of Ancient names)
Noahide commandments 26n17
- Onias, Temple of ~ 114, 114n40
- Oral tradition 54, 153, 233, 241, 268, 272, 284, 288, 291, 303, 309, 334, 393n2, 398, 399, 400n32, 401, 401n35, 405, 444, 613, 616, 646
- Orthodox Judaism 71, 536
- Pagan, paganism 63, 109, 111, 117n58, 120, 128, 130, 133, 136, 189, 195, 224n7, 321, 324, 329n77, 336, 381, 382, 397, 414n11, 450, 460, 461, 513, 575, 592n55, 592n56, 653
- Palestine, see Land of Israel
- Palestinian (excepting Pal. Talmud)
5n14, 12, 29–31, 34–36, 36n47, 38n48, 38, 39, 45, 54n61, 72, 76, 109, 114, 115, 136, 142, 153n46, 156n53, 169, 170, 173, 174, 176, 188, 193, 200n58, 232n57, 238, 246, 255n13, 351, 351n22, 396, 455, 458n2, 464, 487, 490, 529n132, 535, 535n8, 643, 643n102, 649, 650n136
- Parables (genre) 232, 243, 246, 246n**, 251, 253–260, 253n1, 253n2, 254n9, 257n17, 383, 407, 407n58, 468n38, 613, 613n59
- Paraenesis 327, 327n69, 329n77, 336, 337, 342, 343, 343n169, 400, 412, 568
- Parting of the ways, see Conflict
- Passover, see Pesah
- Patriarch, patriarchate 34, 39, 46, 147, 149, 299, 362, 430n87, 535–537, 556, 556n107, 556n112, 598, 649, 659, 660
- Patriarchy, patriarchal 57, 81, 82n55, 85, 87, 100, 101, 333, 434, 447n154
- Paul (see Index of Ancient Names)
~ (ex-)Pharisee 33, 68, 322, 389–390, 448, 452, 467, 549, 553, 567, 581, 581n2, 584–586, 596n72, 597, 598, 601n92, 608, 610–612, 619, 646, 656n172

- churches/tradition of ~ (Pauline) 22, 27, 93, 94, 95n106, 101, 103, 131, 132, 135, 181n157, 182, 183, 185, 225, 263, 295, 323, 324n49, 326n58, 349, 350, 352, 359, 363, 364, 370, 374, 375, 375n124, 378, 380, 395, 396, 396n11, 399, 400n34, 401, 402, 406, 412, 415n17, 446, 446n152, 451, 454, 456, 458, 459, 462, 463, 468, 469, 469n45, 489n118, 578, 585, 593, 595–598, 660n188
anti-Pauline 295, 296, 364n71, 367n90, 415
- Pentateuch (see also Tora) 41, 45, 75, 76, 83, 120, 341, 488
- Pentecost, see Shavuot
- Persian empire/period 5, 6n20, 119, 121, 121n71, 123, 142, 145–147, 145n12a, 150, 154, 162, 189–192, 190n13, 190n17, 192n22, 198, 200, 201, 201n67, 203, 205, 210, 211, 211n100, 213, 254, 318, 318n6, 319, 321, 321n24, 328, 560, 562n14
- Persian language/thought/culture 5, 5n16, 5n19, 121, 123, 174, 198, 201, 210n96, 318n10, 321n24, 604n9
- Pesah 123, 256n15, 290, 591
- Pharisees, Pharisaic *passim*
Pharisaic tradition/halakha 3n6, 17n39, 20, 24, 38, 47, 48, 50, 52, 54–56, 93, 104, 109, 110, 115, 120 138, 284, 292, 293, 398n21, 399, 525, 526, 555, 581, 583, 611, 613, 615
Pharisaic-rabbinic (tradition) 3n6, 6n20, 7, 7n1, 22–24, 26, 32, 38, 69, 87, 88, 93, 101, 107, 109–111, 120, 135, 138, 176, 317n1, 403, 546n65, 555, 591, 597, 613n59, 615
- Philippi (Macedonia) 108, 217, 322–324, 322n37, 324n44, 476, 478, 478n73, 480, 480n78, 544, 545
- Pluralism (Hillelite) 25, 613–619
- Politeia* (citizenship/constitution) 41, 41n1, 43n13, 146n16, 182
- Politeuma* (body of citizens) 41, 41n1, 182n60, 197, 198, 198n45, 202, 204, 205
- Polygamy 84, 84–63, 84–64, 85, 438–125
- Poor, the ~ 223–233, 248, 341, 345, 420, 432n94, 458, 458n3, 464–469, 472–473, 477–479, 568, 569
- Porneia* (*zenut*, unchastity) 26, 71n11, 73, 84, 90, 98–100, 98n113, 102, 334, 335n113, 389n25, 435, 479, 520, 570, 593n57, 594n62
- Prayer, see also Tefilla, Amida; Lord's ~
Jewish ~ 30–31, 109, 149, 261, 264, 266, 268, 268n33, 269, 269n36, 269n38, 273n56, 277, 353, 507n29, 524, 643, 651
Synagogue ~ 8n2, 39, 119n66, 217n49, 274
Community ~ 9–10, 135, 264, 269, 270, 292
'Short' ~ 118, 261–277, 527, 528, 652n150
Private ~ 269–271, 270n46, 528, 528n126
Christian ~ 261, 275, 489, 507, 507n29, 643, 651
- Priest, High/Chief, see High Priest
- Prophets (later/minor ~) 75, 79, 81, 87
- Proselyte, proselytism 22, 102, 103, 108n7, 145, 146, 150, 152, 153n43, 154, 167, 169, 169n109a, 182, 182n160, 195, 197, 211–213, 284n19, 317, 325, 355, 366, 375, 419, 419n36, 428, 428n73, 430, 442, 443, 448, 449, 466, 610n43
- Protestant 69, 71, 102, 223, 237, 314, 348–351, 370, 393–395, 394n4, 402, 502, 586
- Proto-rabbinic 73, 283, 440, 589n41, 647
- Pseudepigrapha 23, 144, 154, 176
- Ptolemaic, see Index of Ancient names
- Purity (see also Food laws) 11, 14n29, 15n35, 17n39, 25, 43, 55, 67, 100n119, 107, 108n2, 108n4, 109, 109n11, 110, 114, 114n43, 115n48, 117n56, 117n57, 118n60, 120–123, 121n69–71, 122n77, 122n78, 129, 130, 131n24, 131n125, 133n135, 135, 135n147, 137, 244, 285n25, 420, 453n180, 492, 493, 519, 647, 648
devotional ~ 41n4, 107, 114, 115, 120, 121, 123–130, 133, 135–138, 136n150

- levitical/ritual ~ 9, 112, 113, 115–117, 117n57, 119–125, 121n74, 123n80, 123n81, 132, 133, 135–138, 136n149, 136n150, 648
- moral ~ 121, 122, 131–133, 131n124, 136n49, 137
- spiritual ~ 117n58, 122, 131, 133, 135, 137, 138
- ~ laws 7n1, 9n5, 10n11, 14n29–31, 15, 15n32–34, 16n37, 17n39, 19, 41n4, 55, 67, 100n119, 112, 116, 121, 122n75, 125n89, 127, 133, 135
- Q, see Synoptic tradition (and Index of sources)
- Qumran (see also Index of sources)
- ~ community 24, 27, 45n23, 46, 46n26, 49, 49n37, 49n38, 53, 69, 73, 74, 79n37, 79n40, 85, 100, 120, 121, 128, 132, 135, 158, 182n159, 189n9, 229, 229n39, 238, 328n76, 336, 344, 344n175, 412, 415, 415n17, 422n48, 423, 436n115, 436n117, 437, 437n119–121, 437n123, 439, 441, 447n154, 448, 449, 523, 600, 600n87, 643, 644n106
- ~ documents 23, 24, 43n15, 51, 68, 72, 74–76, 84, 87, 95, 96, 97n111, 105n138, 161, 175, 182n161, 189, 194, 223, 231, 233n61, 238n12, 238n13, 250, 258, 258n22, 266, 284, 327, 327n68, 361, 363, 367, 367n90, 373, 374, 388–390, 388n20, 389n25, 406, 414, 414n14, 416–419, 417n24, 421, 426, 436n118, 440, 442n137, 443, 456, 473, 485, 486, 487n102, 507, 527, 575n66, 584n21, 588–589, 589n41, 589n44, 591, 594, 603n5, 613, 613n59, 644, 650, 654n166
- ~ halakha 3n5, 4n7, 93n98, 96, 97, 101n120, 284, 329, 352, 352n27, 420–421, 613, 648
- ~ halakha 23, 28, 38, 44, 48, 50, 54, 56, 60, 74, 81n47, 93, 107, 109, 110, 112, 120, 121n70, 138, 284n20, 321n27, 346, 388, 449n161, 592n53
- ~ midrash 4, 61n99, 62, 188, 236, 243, 245, 249n60, 251, 303–307, 429
- ~ movement 23, 87, 275, 276, 406–407, 493, 530, 555, 582n3, 582n8, 598, 598n78, 599, 599n79, 599n81, 646, 647
- Rabbinocentrism 22f, 503, 503n10
- Rabbis 3, 4, 5n16, 14n27, 15n35, 32, 45, 51, 57–61, 68, 74, 79, 80n46, 96n108, 107, 116, 119n61, 121, 121, 124, 126, 135, 137, 138, 179n148, 192, 235, 236n7, 245, 251, 266, 270, 271, 274, 276, 277, 290n53, 296, 301n13, 338, 346, 365, 374, 399, 405–407, 412, 415, 416, 427, 429–431, 439–441, 443, 449, 452, 501, 504, 506, 511n48, 521, 526, 529n131, 530, 531, 533n1, 540, 556n12, 576, 581–583, 583n10, 585–588, 591, 591n52, 594–601, 610n45, 621, 623, 624, 634n60, 641–644, 642n96, 647, 649, 650, 655–660
- Rape 56, 61
- Rebellious son 59, 61
- Redaction criticism 28, 533, 547n69
- Reform Judaism 71, 502
- Reformation (see also Protestant) 69, 101, 102, 347, 347n2, 352n25, 393, 395
- Resurrection 94, 228n37, 232, 282, 294, 298, 329, 390, 408, 409, 432, 493, 552, 587, 596, 597, 598, 607, 611
- Revolt/War 152, 154, 276, 646
- ~ under Nero (Great ~) 42, 101, 104, 151, 160, 162, 164n86, 166n95, 180, 208–210, 216, 289, 291, 295, 377, 378n134, 379n139, 425, 428, 458, 474, 475, 483, 534, 541–544, 556, 559–566, 561n9, 563n18, 571, 572, 574–576, 578, 592n53, 605, 606, 609, 613–615, 618, 641, 648
- ~ under Trajan 321–322, 510, 513, 529
- ~ under Hadrian/Bar Kokhba (see also Index of Ancient names) 115n48, 133, 151–153, 166, 167, 202n68, 207, 210, 252, 494, 509–512, 509n41, 511n45, 511n47, 514, 528, 530, 621
- Rabbi (title) 33, 268, 290–291, 293, 518, 520, 521, 529, 529n131, 529n132, 530, 582, 582n6, 582n8, 606
- Rabbinic tradition/literature *passim* (see also Pharisaic-Rabbinic tradition)

- Rhetoric, rhetorical 42, 42n9, 54, 63–65, 63n106, 65n117, 208, 214, 253, 253n2, 267n26, 309, 328n76, 334, 338n134, 354, 372, 380, 382, 396, 396n13, 413, 440, 443, 444, 455n190, 460, 460n13, 461, 461n16, 469–473, 481, 505n19, 542n41, 552, 554n102, 560, 561, 563, 564, 565n30, 566–569, 570n40, 574n57, 578, 603n5, 612, 618, 657, 658, 660
- Ritual 46, 113, 116, 132, 134, 159, 177, 244, 245, 250, 406, 414n11, 427, 428, 484, 509, 513, 522, 525, 527n119, 541, 544, 572, 653
- Temple ~ 13, 13n25, 24, 48, 49n36, 51, 112, 113, 116, 125, 225, 266, 269, 269n37, 271, 284n20, 288, 306, 365n75, 376, 420, 474, 509, 509n38, 524, 528, 570, 591, 600, 613, 613n58
- Purification ~ 8, 9, 18, 25, 110–113, 115n49, 117, 117n58, 120, 121, 121n73, 125, 127–129, 128n108, 132–136, 133n138, 176, 229, 230, 376, 436, 451
- Roman *passim*
- ~ citizen 552n93, 553, 629
- ~ empire 41, 72, 124, 192n23, 208, 211, 213, 217, 224, 261, 272, 296, 322, 348, 376, 377, 509–511, 511n45, 530–533, 535, 543, 544, 547, 547n68, 560, 571n41, 592, 592n56, 621, 625, 625n17, 626, 628, 628n33, 631, 631n45, 641, 657n176, 658, 660
- ~ law 62n101, 64, 97, 197n41, 384, 384n7, 398, 547, 628, 628n32, 633n53, 635n31, 645, 659
- ~ period 93, 107, 108n5, 123, 142, 147, 150, 164, 179, 202, 289n50, 540n35
- Roman Catholic 69, 70n7, 71–73, 98n115, 102, 102n128, 226n25, 237n11, 347, 348, 365, 393, 394n4, 395, 465n32
- ~ canon law 71, 101n120, 102n124, 402n42
- Rome, churches/Christians in ~ 372, 379, 381, 382, 384, 385, 387, 390, 395, 400, 403, 472–474, 557n115, 569, 627
- Rosh ha-Shana (New Year) 47
- Sabbath 43n15, 46–53, 46n28, 52n53, 53n55, 56, 57, 100, 100n119, 103, 104, 133, 146, 179, 179n144, 232, 235, 238, 269, 270n46, 289n50, 297–302, 298n1, 298n4, 298n5, 301n14, 303n20, 304, 304n27, 305, 305n31, 307–312, 308n41, 309n45, 310n47, 319, 340, 352, 364, 365n75, 377n130, 431, 448n160, 497, 497n146, 512, 513, 518–520, 519n87, 526, 527n119, 549, 551, 606n20, 608, 608n31, 624n13, 636–638, 638n78, 641
- ~ halakha 4, 4n9, 128, 298n1, 310
- preservation of life on ~ 51, 51n50, 52, 303–306, 305n29, 309, 606n20
- Sadducean 43n15, 50n45, 51n47, 57, 57n73, 83n56, 505n21, 546n65, 549, 554, 554n102, 555, 611, 611n48, 612, 613, 613n58
- Sadducees 9, 16, 16n38, 24, 24n10, 25, 42, 42n5, 42n7, 50n39, 51, 55, 56, 62, 178, 266, 266n20, 286n29, 302n17, 319, 340, 427, 527, 527n119, 545, 546, 546n65, 552, 553, 583, 583n10, 599n84, 600, 604n6, 605, 609–611, 609n36, 612n51, 613n55, 615n65, 644, 653, 656
- Samaritan 115, 115n49, 177, 178, 178n141, 216, 219, 279, 313, 432, 442n138, 559, 633, 654, 654n163
- Seleucid, see list of Ancient names
- Sepphoris (Tsiפורי) 68n2, 633
- Septuagint (see also Index of sources) 50, 50n41, 60, 74, 79, 81, 82, 87, 94, 98n113, 145n11, 146n13, 156, 224, 224n11, 226, 227n33, 238, 243, 245, 249, 250, 258, 327n71, 330, 333n108, 335n113, 336, 342, 358, 413, 430, 430n88, 441, 442, 470, 470n47, 471, 484, 485, 488, 551, 601n92
- Sermon on the Mount 97, 104n136, 226, 232, 267, 290n53, 293, 424, 515
- Sexual relations 59, 60, 100, 111, 379n140, 402, 492
- ~ (mis)behaviour 54, 57, 89n80, 98, 131n125, 321, 332, 333, 335, 336, 357, 381, 402, 434, 438n125, 444, 451

- Shammai, School of (see also Index of Ancient names) 11–13, 17, 17n42, 20n54, 25, 42, 53–56, 69, 70, 73–75, 82n52, 83n57, 83n59, 85–91, 88n74, 89n79, 89n80, 91n89, 99–102, 104, 104n134, 105, 110, 127, 269, 284, 287, 289, 289n46, 290, 292, 293, 319, 377–379, 378n138, 388, 389, 389n25, 425–428, 428n77, 434n104, 441, 449, 474, 483, 519, 525, 578n76, 591, 591n51, 592n54, 593n59, 594, 594n62, 598, 600, 605, 606, 606n16, 614, 616, 616n73, 617, 647, 648
- R. Eliezer Shammaite (see also Index of Ancient names) 11–12, 18n24, 86, 127, 284n21, 377n131, 427, 428, 428n73, 592n54, 606n20, 616, 649
- Shavuot (Pentecost, Festival of Weeks) 46, 48, 49
- Sicarii* 289n43, 474n57, 545, 545n63, 564, 565n30, 571, 573, 573n54, 574, 574n57, 574n59, 574n61, 575n63, 576, 577
- Slaughter 284n21, 591, 592, 597, 632, 633, 653–655
- Social significance/distinction 21, 105, 141, 529n131, 607
- socially significant/distinct 192, 196, 415
- Stoic(ism) 15n35, 58n81, 296, 328n73, 336, 336n125, 337, 338, 345, 363, 365, 365n77, 374, 385n10, 394, 445n148, 446n151, 460n10
- Sukkot (Tabernacles) 46, 47, 50, 50n45, 51, 199, 199n56, 595
- Sunday (festival day) 46, 49, 523, 629n37
- Supersession 236, 282, 294, 512, 514, 521n96
- Synagogue(s) 8n2, 31, 39, 45n22, 104, 107, 108, 108n2–5, 114–116, 114n42, 114n44, 114n45, 115n46–49, 116n51, 119, 119n66, 124, 124n84, 126, 126n98, 128n111, 135, 138, 139, 153, 153n42, 157, 171n118, 176, 179, 183, 214, 225, 226, 237, 239, 252n***, 269, 270n39, 271n49, 274, 275, 283, 286, 286n31, 301, 319–321, 319n11, 319n15, 320n17, 321n23, 324, 324n43, 325, 328n73, 345, 353, 354, 354n34, 357, 358, 361, 368, 370, 373, 375, 381, 430, 482, 495, 517, 517n79, 524, 524n114, 527n117, 528n125, 531, 611, 612, 619, 623, 624n11, 638, 642, 642n96, 651
- ~ language 353, 353n34, 354, 354n34, 357, 358, 361, 368, 373, 375, 381
- Synoptic
- ~ Gospels 45, 68n4, 71, 71n12, 176–178, 183, 184, 188, 189, 231, 302, 308, 308n40, 309n44, 401n37, 426n63, 486n97, 490, 507, 519, 594, 639
- ~ tradition 51, 67, 68, 96, 97, 97n111, 103, 176, 177, 241, 245, 293, 331n91, 360, 363, 386, 403, 404, 433, 486n97, 489, 490, 519, 523n10, 635, 639, 640n89
- ~ problem 105, 105n138
- Syria 147n18, 153, 192, 216, 531, 553, 564, 565, 569, 660
- Syrian 147, 153n46, 162, 362, 418
- System, halakhic ~ 6, 25, 41–65
- purity ~ 15n35, 19, 41n4, 107–139
- Tanna* (memorizer) 28, 36, 251n63, 398–399
- Tannaim (early rabbis), Tannaic 32, 33n36, 34–36, 36n45, 38, 43n15, 46, 47n29, 86n70, 89n78, 112, 113, 121, 122, 125, 129, 132, 166, 167, 171–173, 239, 240, 240n27, 303–306, 416, 425, 439, 464, 487, 491, 495, 513, 518n80, 525, 526, 528, 540, 546, 582, 583, 587, 591, 594, 600, 632n50, 643, 649
- Tannaic halakha 17, 34, 43n15, 121, 540, 583, 591
- Tannaic midrash 75, 89n79, 115, 168, 169, 182n159, 193, 236n5, 240, 312, 492n133, 589n44
- Tefilla (see also Prayer) 118, 119, 130n4, 268, 269n38
- Temple (Jerusalem) 10, 13, 47n29, 113–115, 113n32, 114n39, 139, 144, 145, 210, 288, 420 429n80, 479n75, 480, 509n38, 512, 527, 543, 545, 592, 614n60, 658

- ~ ritual, see Ritual
- Teruma* (heave offering) 8, 9, 9n6, 16, 33, 119n62, 647
- Theft 57n73, 62, 62n101, 176, 381, 521, 630
- Therapists 65, 434, 440
- Thessalonika 216, 217, 322–324, 322n36, 324n44, 338, 343n172, 344, 375n126, 450
- Thursday (fastday) 266, 274, 275, 523, 526, 527
- Tiberian 38
- Tiberias 115n48, 147n19
- Tora (see also Pentateuch) 6n21, 13n25, 24, 24n5, 30, 32, 33, 38, 76, 78n34, 88n77, 96, 112n29, 116, 118, 118n60, 119, 119n63, 123, 126, 126n98, 129, 130, 138, 150, 158, 159, 162, 165, 173n130, 190n13, 227–231, 238, 270n46, 309, 312, 320, 320n19, 345, 351n18, 351n20, 352, 352n27, 353, 358, 363, 364n71, 366, 367n90, 393, 398, 399, 427, 429–431, 430n87, 447, 493, 495, 524n111, 556, 586n30, 591, 592n55, 595, 599, 599n79, 599n84, 611n48, 633, 635, 644
- oral or written ~ 10n11, 22, 30, 45n20, 284n23, 393, 399n26, 427n67, 599n79, 613n59, 616n68
- Trent, Council of 71, 102
- Tübingen school (see also Index of Modern names, Baur) 22, 462, 465, 474n56
- Twentieth century (scholarship) 220, 349, 393, 401, 405, 406, 501, 502, 505, 506
- Two Ways (tractate of) 134, 416, 421, 422n55, 423–424, 487, 487n103, 507–509, 512, 522
- Unchastity, see *Porneia*
- Unleavened bread, see Pesah
- Usha 10n11, 15, 15n33, 15n35, 18, 18n46, 19, 19n52, 272, 273, 531n139, 649n135
- War (see also Revolt) 12, 53, 58, 210, 242, 276n67, 290, 310, 417n27, 422, 423, 485, 489n117, 531n138, 539, 556n10, 560–562, 560n7, 578, 625n17
- ~ on Sabbath 52, 52n53, 53, 53n55, 104, 309n45, 606n20
- World ~ (First, Second) 219, 348, 502
- Wednesday (fast/festival day) 46, 266, 274, 293n70, 523, 526, 527
- Wisdom (books, tradition) 76, 157, 296, 333n108, 353, 374, 394, 616
- Wissenschaft des Judentums 3, 3n1, 22, 279n1, 502, 502n1, 503
- Women, position of 33, 44n19, 53, 56, 57, 59–61, 71, 73–75, 78, 78n29, 82, 82n55, 83, 85, 88, 89n80, 90–95, 91n88, 97, 100, 113n32, 118, 124n87, 150n30, 167, 167n97, 333, 334, 383–388, 403, 431–434, 446, 447, 543, 594
- Yavne 10, 10n11, 14, 14n31, 15, 15n33, 18, 18n46, 38n63, 271, 272n51, 272n53, 273–275, 501, 528, 530n34, 533n1, 536, 538, 540n35, 556, 557n114, 582, 582n3, 582n4, 583n9, 583n10, 601n91, 605, 621, 646n117, 650n141, 651
- ~ period 14n31, 15, 290n53, 530, 533, 540, 556n107, 614
- Yavnean 531, 616
- Yehud (Persian province) 145, 145n11, 145n12, 146, 149, 150, 154, 165
- Yom Kippur (Day of Atonement) 46, 47, 137, 491, 505n21, 527n119
- Zeal (for the Law) 104, 216, 296, 321, 322, 362, 376, 475, 483, 550, 567–571, 575, 576
- Zealot, Zealots 12, 12n21, 13, 13n25, 104, 115n48, 162, 164n86, 290n51, 295, 296, 322, 375n126, 377–379, 377n128, 378n134, 379n140, 428n75, 474, 474n58, 475, 475n59, 478, 481–483, 534n6, 559n2, 560n8, 564n20, 566n33, 572n47, 573n51, 573n54, 573n56, 574, 574n57, 574n59, 574n61, 575n63, 575n66, 576–578, 577n70, 577n71, 592n53, 592n54, 606, 606n17–19, 610n45, 648n128