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# D'Amato, Kripke, and Legal Indeterminacy

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# ESSAY: D'AMATO, KRIPKE, AND LEGAL INDETERMINACY

## Russell Pannier[†]

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## I.  INTRODUCTION

Is any legal system necessarily indeterminate? I shall refer to this question as the *legal indeterminacy question* and to any affirmative answer to the question as an instance of the *legal indeterminacy thesis*. I shall examine what I consider one of the strongest arguments in support of the thesis—the argument for rule-skepticism presented in Saul Kripke's *Wittgenstein on Rules and Private Language.*[1] In order to put reasonable limits on the inquiry, I choose to focus upon a particular invocation of Kripke's argument in the legal indeterminacy cause—an invocation articulated by Anthony D'Amato, one of the most important and persuasive proponents of the indeterminacy thesis.[2] I shall argue that Kripke's argument for rule-skepticism fails and that, to the extent to which D'Amato's argument for the legal indeterminacy thesis relies upon Kripke's argument, it fails, as well.

A.  *The Sense Of The Legal Indeterminacy Thesis At Issue—Radical
    Indeterminacy*

The legal indeterminacy thesis has been a major topic of debate for much of the twentieth century, especially in the United States.[3] But precisely how should it be understood? Can it be in-

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1.  SAUL A. KRIPKE, WITTGENSTEIN ON RULES AND PRIVATE LANGUAGE(1982).
2.  Anthony D'Amato, *Pragmatic Indeterminacy*, 85 NW. U. L. REV. 148 (1990).
3.  H.L.A. HART, *American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream, in* ESSAYS IN JURISPRUDENCE AND PHILOSOPHY, 123 (1983).

terpreted in more than one way?

It's unlikely that the thesis has any single intended sense for all participants in this apparently interminable debate. A frustrated trial attorney who has just lost a jury trial, on the one hand, and a legal philosopher, on the other, might both contend that law is necessarily indeterminate, but may well intend to convey different thoughts in so doing. The attorney may intend merely to make the common observation that in any trial there exists the possibility of getting stuck with a juror who just refuses to "see the light." Claims of this sort reduce to the claim that the "mixed law and fact" determinations of legal proceedings are not predictable with certainty. In contrast, the philosopher may intend to advance the more radical claim that legal rules themselves are necessarily indeterminate, that is, that there are no legal rules in any philosophically interesting sense. These are but two of many possible interpretations of the indeterminacy thesis.

Thus, there are several alternative ways of construing the assertion that law is indeterminate. I shall not try to distinguish all of the possible alternative interpretations, but shall rather focus upon the radical end of the spectrum of interpretations.

Obviously, my choice presupposes the possibility of ordering the set of alternative interpretations in terms of degrees of "radicalness." But what does "radical" mean in this context?

Lawrence Solum is helpful in this regard.[4] He suggests that the most radical way of construing the indeterminacy thesis is construing it as the claim, "In any set of facts about actions and events that could be processed as a legal case, any possible outcome— consisting of a decision, order, and opinion—will be legally correct."[5] Solum calls this the "strong" indeterminacy thesis.[6]

Now, it seems that if *any* outcome is legally correct then there is a sense in which *no* outcome is legally correct, at least in the ordinary sense of "correct." Imagine a game in which there are no constraints upon what moves are permissible. The ordinary sense of "correct move" could have no possible application, for that sense is necessarily tied to the contrasting sense of "incorrect move." If all moves are correct then, at least in the ordinary sense of "correct," none are. Thus, it seems that Solum's characterization of the

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4.   ESSAYS IN JURISPRUDENCE LAWRENCE B. SOLUM, INDETERMINACY, IN A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 488 (Dennis Patterson ed., 1996).

5.   *Id.* at 491.

6.   *Id.*

strong indeterminacy thesis can be expressed in two equivalent forms: [1] the claim that all possible legal outcomes are legally correct, and [2] as the claim that no possible legal outcomes are legally correct. The essential point is that the term, "legally correct," can't really be appropriately applied in its ordinary sense to the outcomes of possible legal proceedings.

Solum's explication of the relevant sense of "radical" provides a way of ordering alternative interpretations of the indeterminacy thesis. An interpretation maintaining that all possible legal outcomes are legally correct is more radical than an interpretation maintaining that at least some possible legal outcomes are legally incorrect. [Equivalently, an interpretation maintaining that no possible legal outcomes are legally correct is more radical than an interpretation maintaining that at least some possible legal outcomes are legally correct.] Indeed, an interpretation of the former kind is properly ranked at the far end of the "radical" end of the spectrum of possible interpretations. For, such an interpretation apparently reduces to the claim that no legal system could impose legally normative constraints upon any of its outcomes. If that were true, the term, "legal system," understood in its ordinary sense, could have no application. It seems that any interpretation of the indeterminacy thesis entailing that conclusion deserves the adjective "most radical." I shall refer to such an interpretation as an instance of the *radical indeterminacy thesis.* The set of interpretations located short of the most radical interpretation can be ordered in terms of the degree to which they approximate that interpretation.

Solum distinguishes four major types of arguments that have recently been offered in support of the radical indeterminacy thesis.[7] He classifies them as arguments from "hard cases," "rule-skeptic" defenses, "deconstructionist" defenses, and "epiphenomenalist" defenses.[8] He characterizes rule-skeptic defenses as defenses relying upon the "philosophical skepticism about rules that is associated with Saul Kripke's interpretation of certain remarks by Ludwig Wittgenstein."[9] As indicated, I shall focus upon the rule-skeptic defense of the radical indeterminacy thesis and, in particular, upon D'Amato's version of that defense.

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7. *Id.* at 491-97.
8. *Id.*
9. *Id.* at 493.

## B. Why Is The Question Whether The Radical Indeterminacy Thesis Is True Important?

D'Amato maintains that the question whether the radical inde-terminism thesis is true is one of the most important contemporary jurisprudential issues.[10] I agree. There are at least two reasons for thinking so.

The first arises from the purely intellectual desire to know the truth about the world. The radical indeterminacy thesis clashes dramatically with the received conception of law most people share. If that thesis is true, it would be intrinsically desirable both to know that and to understand why.

The second reason is related to the inherently coercive nature of law. At least part of the essence of law is its inclusion of norma-tive propositions of the general form, "[y]ou must [or must not] do X," where "must" is backed by the threat of coercion. Any particu-lar coercive application of law gives rise to the *question of justifica-tion*, "[w]hat justifies *this* particular coercive application of law?" As a matter of political morality, it seems that any minimally adequate response to the question of justification must include, at the very least, the claim that the law *requires* it in this particular case. But one of the apparent consequences of the radical indeterminacy thesis is the proposition that no response to the question of justifi-cation could ever properly include the claim that the law requires *any* particular result. For example, an executioner preparing to execute a prisoner should presumably respond to the latter's ques-tion, "[b]ut does the law require that I be executed?" with the as-sertion, "[t]he law never requires anything. Your execution is an accidental and arbitrary outcome of the legal process." At least prima facie, such a consequence seems morally unacceptable. But if the radical indeterminacy thesis is true, it seems nonetheless a consequence we must accept. Hence, it is important to ascertain the truth of the matter. If the thesis is false, we can justifiably con-tinue holding the traditional belief that a morally necessary condi-tion for a coercive application of law is that the law requires the application. On the other hand, if the thesis is true, then we should discard the traditional belief.

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10.   D'AMATO, *supra* note 2, at 148.

*C.   D'Amato's Argument*

D'Amato presents several sophisticated and challenging arguments in support of the radical indeterminacy thesis.[11]

*1.   A Preliminary Issue*

Before discussing one of those arguments in particular, I want to address a preliminary issue.  D'Amato says that the radical indeterminacy claim can't be "defined."[12]  But if that were literally true, no attempt to evaluate the claim could possibly succeed.  In order to evaluate a claim we must first understand it.  If its meaning can't even be articulated, there is nothing to understand, much less evaluate.

In this regard, D'Amato remarks, "To 'define' a concept is to specify its meaning; the true Indeterminist attacks the notion that words can have definably specific, bounded meanings.  In particular, the word 'indeterminate' cannot have a specific, bounded meaning."[13]  This comment could be uncharitably construed as an effort to sophistically shield the indeterminacy thesis from even the logical possibility of criticism.  Such an uncharitable interpretation might proceed as follows:

[1] The indeterminacy thesis denies that words have specific meanings.

[2] If the indeterminacy thesis is true, any words
used to express the indeterminacy thesis itself would themselves lack specific meanings, that is, the thesis itself would have no specific meaning.

[3] If the thesis has no specific meaning, then any  criticism of the thesis would be logically inappropriate because criticism would necessarily presuppose that the thesis has a specific meaning.

[4] But the indeterminacy thesis is true.

[5] Hence, criticism of it is unjustifiable.

The argument seems incoherent.  Consider [4]—the claim that the indeterminacy thesis is true.  A necessary condition for any proposition's having a truth value is having a meaning.  But that is precisely what is denied by the conjunction of [2] and [4].

However, that would be an uncharitable interpretation.  Consider another of D'Amato's comments, "[n]o account of the subject

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11.   *Id.*
12.   *Id.* at 161-62.
13.   *Id.* at 162 n.36.

can be complete, because Indeterminacy cannot be bounded or circumscribed—that word (concept) like all other words (or concepts) does not have a determinate core meaning. However, let me try to sketch what at the present time I think are its main procedures and goals."[14]  This suggests a much more moderate claim, namely, that although there is *some* sense in which no "complete" account of the indeterminacy thesis can be given, *something* of its meaning can be articulated—namely, its "main procedures and goals." Of course, there may be difficulties for even this claim. For example, how exactly should the distinction between "complete" and "less-than-complete" accounts of a proposition's meaning be drawn?  But at the very least it seems pretty clear that D'Amato is not trying to sophistically bar criticism of the indeterminacy thesis. Accordingly, I shall assume that the thesis can be articulated in *some* intelligible way and that, not only does D'Amato not deny it, but he undertakes that very task.

### 2.  D'Amato's Interpretation Of The Indeterminacy Thesis

How does D'Amato understand the indeterminacy thesis?  Using his own words, what does he identify as its "main procedures and goals?"

On the one hand, some of his statements suggest that the sort of indeterminacy he may have in mind is *factual* indeterminacy.  By the *factual indeterminacy thesis* I refer to the claim that, although there may exist normatively correct outcomes for at least some possible legal proceedings, there always exists a possibility that in any actual legal proceeding something could go wrong.  An intoxicated trial judge might give incorrect jury instructions, a juror might threaten other jurors with violence, an appellate judge might take a bribe, and so forth.  The factual indeterminacy of law was often stressed by the classical legal realists.[15]

Much of D'Amato's discussion strongly suggests the factual indeterminacy thesis.  For example, he says:

> Yet if scholars are going to catch up to what experienced practitioners know—that you can win cases even though the law is clearly against you, and lose cases even though the law is overwhelmingly on your side—we should boldly confront the possibility of Indeterminacy and its implica-

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14.  *Id.* at 179.
15.  *E.g.,* JEROME FRANK, LAW AND THE MODERN MIND (1936).

tions for the way we teach and write about law.[16]

This suggests the factual indeterminacy thesis inasmuch as it makes the fairly common observation that litigants can lose their cases even when their legal claims are, normatively considered, correct. Another passage of similar import concerns the decision of a hypothetical judge who stonewalls an attorney whose arguments are legally stronger than his opponent's.[17] There are many such passages.[18]

However, that would be an uncharitable interpretation. He eventually makes it clear enough that the indeterminacy he has primarily in mind is *normative* indeterminacy.[19] By the *normative indeterminacy thesis* I refer to the view that the question, "What out-come *legally ought* to result in this particular case?" is always logically inappropriate. The law never legally requires *any* particular result. Any possible outcome of any possible legal proceeding is just as legally "correct" as any other possible outcome. I shall assume that the normative indeterminacy thesis is equivalent to what I have been calling the "radical" indeterminacy thesis.

### 3. D'Amato's Reliance Upon Kripke's Interpretation Of Wittgenstein

I turn to the way in which D'Amato relies upon Kripke's interpretation of Wittgenstein. It is helpful to begin with a clarification of D'Amato's terms. By *formalism* he refers to any view denying the radical indeterminacy thesis.[20] Thus, in D'Amato's sense, formalists deny that all possible legal outcomes are legally correct. By the *Fundamental Formalist Postulate* he refers to the claim that "every word has a determinate core meaning that is not reasonably disputable."[21] He abbreviates the claim as the *FFP*.[22]

Given these definitions, the general structure of D'Amato's argument for the radical indeterminacy thesis appears to be the following:

[1] Either formalism is true or the radical indeterminacy thesis is true. {Premise}

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16.   D'AMATO, *supra* note 2, at 148-49.
17.   *Id.* at 154-56.
18.   *E.g., id.* at 150, 151, 157, 158, 160, 161, 166, 167, 168, 169, and 170.
19.   *E.g., id.* at 171-72.
20.   *Id.* at 171. This is my interpretation of his remarks. He doesn't express it in quite this way, but I think that my formulation captures his intention.
21.   *Id.* at 171-72.
22.   *Id.* at 171.

[2] If formalism is true then the FFP is true. {Premise}
[3] The FFP is not true. {Premise}
[4] Formalism is not true. {2,3}
[5] The radical indeterminacy thesis is true. {1,4}[23]

I shall call this *D'Amato's Radical Indeterminacy Argument*. The argument is deductively valid. Hence, the only interesting question is whether the premises are true.

Given the way in which "formalism" has been defined, [1] is an instance of the law of excluded middle and therefore self-evidently true.

What about [2]? The question is whether formalism presupposes the FFP. I am inclined to concede that it does, at least given a certain qualified understanding of the FFP. There are two points. First, I shall assume that by "word" D'Amato has primarily in mind general terms. In this connection, I use the phrase, "general term," in the usual way to refer to linguistic expressions representable as n-place predicates, as defined in standard quantification theory.[24] Examples are, "___ is a human being," "___ is a human hand," "___ is an assault," "___ is a state capitol building," "___ is in debt to ___," "___ promised ___ to pay ___'s debt," and so forth. Second, I shall assume that the FFP can be understood as asserting that at least some of the general terms in any natural language have paradigm instances. Why would anyone sign on to the claim that literally *all* general terms have paradigm instances? There are too many uncertainties. Some general terms may be so impossibly vague that they simply have no paradigm cases, [*e.g.*, "awesome"?]. Others may be self-contradictory and thus have no instances at all, much less paradigm instances, [*e.g.*, "___ is a circle and is not a circle"]. In any case, it seems to me that the issue doesn't have to be resolved in this context. The modified form of the FFP should be acceptable to D'Amato for his own polemical purposes. Presumably, he also rejects it in its modified form. Indeed, it seems that he would be logically compelled to reject it. For, as I have just argued, it seems obvious that formalist theories could be based upon modified versions of the FFP and D'Amato is committed to rejecting any version of formalism.

With these qualifications, I am willing to concede that formalist theories of law presuppose the FFP. That is, any theory of law

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23. This is my reconstruction of the overall argument of *id.* at 171-89.
24. *E.g.*, BARBARA PARTEE, ET AL., & ALICE TER MEULEN & ROBERT E. WALL, MATHEMATICAL METHODS IN LINGUISTICS 135-45 (1993).

which rejects the radical indeterminacy theory of law presupposes that at least some general terms in any natural language have paradigm instances. Why should this be so? Surely, formalist theories presuppose that linguistic expressions are typically semantically tied to meanings which are intersubjectively communicable. But it is difficult to see how language could serve this function if *all* general terms lacked paradigm cases.[25]

What about [3], the last remaining premise? D'Amato offers six supporting arguments for [3].[26] The second is the one relying upon Kripke.[27] As indicated, that is the argument upon which I shall focus.

Exactly how does this second argument go? It seems to come to this:

[1] If, for an arbitrarily selected general term, G, no amount of past usage of G can normatively justify any particular present application of G then the FFP is false. {Premise}

[2] For an arbitrarily selected general term, G, no amount of past usage of G can normatively justify any particular present application of G. {Premise}

[3] The FFP is false. {1,2}[28]

I shall call this *D'Amato's Second Supporting Argument*. It is deductively valid. Hence, the only question is the truth-values of the premises. Premise [1] seems at least initially plausible. What about [2]? How might it be supported? D'Amato maintains that Kripke proves [2] in the course of explicating Wittgenstein's views. Thus, presumably, the logically appropriate way for D'Amato to support [2] would be to formulate Kripke's argument and then argue for its soundness. In this regard, D'Amato's says:

> Saul Kripke has explicated and generalized Wittgenstein's result. Kripke has shown that even if you have a rule as determinate as the mathematical law of addition, a person who adds two numbers she has never added before (68 + 57, to use Kripke's example) can give *any* answer (say, 2,381) and say that she has used 'quaddition' which gives the same results as 'addition' except when 68 and 57 are being added.[29]

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25. For a general argument along these lines, see H.L.A. HART, THE CONCEPT OF LAW 124-54 (2d ed. 1994).

26. D'AMATO, *supra* note 2, at 171-78.

27. *Id.* at 173-76.

28. This is my reconstruction of *id.* at 173-75.

29. *Id.* at 173-74.

I doubt whether anyone who has not read Kripke's book is likely to understand much of this highly compressed account of Kripke's analysis. But in fairness to D'Amato, he purports neither to articulate the precise structure of Kripke's argument nor to systematically evaluate its soundness. These are the tasks I shall undertake. I shall argue that Kripke's argument fails, that is, that it fails to demonstrate the falsity of the FFP.

## D. *Kripke's Argument*

In the course of proposing an interpretation of paragraphs 143 - 242 of Wittgenstein's *Philosophical Investigations*,[30] Kripke does two things. First, he formulates a *Skeptical Paradox* purporting to demonstrate the impossibility of applying linguistically formulated rules.[31] Second, he presents what he takes to be Wittgenstein's response to that paradox, describing that response as a *Skeptical Solution* of the paradox.[32] Because D'Amato's argument relies upon only the first item, the Skeptical Paradox itself, I shall also. In a subsequent paper I plan to take up Kripke's version of Wittgenstein's Skeptical Solution.

In order to forestall a potential misunderstanding, I want to clarify my purpose in taking up Kripke's account. He is primarily concerned to interpret Wittgenstein's discussion of rules. Whether Kripke does justice to Wittgenstein is a contested matter. Many argue that Kripke fails to accurately depict Wittgenstein's views.[33] I won't discuss that question. For the purposes of this paper, I don't care whether Kripke has Wittgenstein right. I am rather interested in Kripke's own formulation of an argument for rule-skepticism. It is a powerful argument, meriting attention in its own right, regardless of whether it may or may not explicate Wittgenstein. In any event, it is Kripke's version of Wittgenstein upon which D'Amato relies.

Some might well question the utility of yet another analysis of Kripke's interpretation. Hasn't it already been discussed at great

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30. LUDWIG WITTENSTEIN, PHILOSOPHICAL INVESTIGATIONS (G.E.M. Anscombe trans., 3d ed. 1968).
31. KRIPKE, *supra* note 1, at 7-54.
32. *Id.* at 55-113.
33. *E.g.*, ROBERT FOGELIN, WITTGENSTEIN 241-46 (2d ed. 1987); MARIE MCGINN, WITTGENSTEIN AND THE PHILOSOPHICAL INVESTIGATIONS 73-111 (1997); RONALD SUTER, INTERPRETING WITTGENSTEIN: A CLOUD OF PHILOSOPHY, A DROP OF GRAMMAR 204-16 (1989).

length? Can anything further be usefully said? Of course, there have been many discussions and I have found many of them help-ful.[34] But what I have not found is any sustained effort to rigorously formulate the argument's deductive structure. Even Kripke does not attempt it. That is what I shall undertake. Why should we care about the precise structure of the argument? Without a clear and distinct understanding of the argument's structure, we stand little chance of successfully evaluating its efficacy in the cause of radical indeterminacy .

Readers may question the length and relative complexity of my analysis. I submit that its length and complexity are not only justi-fiable, but necessary, given the length and complexity of Kripke's own presentation and its lack of a precisely formulated argument.

Readers may also challenge my emphasis upon issues in the philosophy of language, as contrasted with purely legal issues. But Kripke's own discussion focuses primarily upon issues in the phi-losophy of language. Presumably, any competent analysis of that discussion should follow suit. In any case, the relationship between Kripke's analysis and law is immediate. After all, it is proponents of the radical indeterminacy theory of law [*e.g.*, D'Amato] who are re-sponsible for introducing Kripke's analysis into the jurisprudential forum in the first place. Any adequate response to that introduc-tion should itself, sooner or later, respond directly to Kripke.

What precisely is the Skeptical Paradox about rules Kripke at-tributes to Wittgenstein? I begin by trying to identify its conclusion.

### 1. What Is The Conclusion Of The Skeptical Paradox?

I haven't found it easy to locate the conclusion. So far as I can see, Kripke nowhere purports to give it a definitive formulation. Instead, he expresses it in a variety of ways as he goes along. His

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34. *E.g.*, FREDERICK SCHAUER, PLAYING BY THE RULES: A PHILOSOPHICAL EXAMI-NATION OF RULE-BASED DECISION-MAKING IN LAW AND LIFE 64-8 (1991); KENT GREENWALT, LAW AND OBJECTIVITY 71-3 (1992); JULES L. COLEMAN & BRIAN LEITER, *Determinacy, Objectivity, and Authority, in* LAW AND INTERPRETATION: ESSAYS IN LEGAL PHILOSOPHY 203, 219-23 (Adrei Marmor ed. 1995); ANDREI MARMOR, INTERPRETA-TION AND LEGAL THEORY, 146-54 (1992); BRIAN BIX, LAW, LANGUAGE AND LEGAL DE-TERMINANCY 36-62 (1993); GARY EBBS, RULE-FOLLOWING AND REALISM 9-39 (1997); JERROLD J. KATZ, THE METAPHYSICS OF MEANING 163-74 (1990); SOLUM, *supra* note 4, at 493-95; BOB HALE, *Rule-Following, Objectivity and Meaning, in* A COMPANION TO THE PHILOSOPHY OF LANGUAGE 369, 369-79 (Bob Hale & Crispin Wright eds. 1997); Christian Zapf & Eben Moglen, Eben, *Linguistic Indeterminacy and the Rule of Law: On the Perils of Misunderstanding Wittgenstein*, 84 GEO. L.J. 485 (1996).

formulations can be roughly sorted into three categories, each representable by one of the following statements:

[1] "...his solution to his own sceptical problem begins by agreeing with the sceptics that there is no 'superlative fact'. . about my mind that constitutes my meaning addition by 'plus' and determines in advance what I should do to accord with this meaning."[35]

[2] "The skeptical argument, then, remains unanswered. There can be no such thing as meaning anything by any word."[36]

[3] "...it appears that he has shown *all* language, *all* concept formation, to be impossible, indeed unintelligible."[37]

After paraphrasing and generalizing a bit, we seem left with three denials: [1] denies the existence of mental acts correlating words with semantical rules, [2] denies the possibility of meanings, and [3] denies the very possibility of language and concept formation.

These denials are not obviously equivalent and Kripke makes no effort to persuade us otherwise. Thus, the reader must make an interpretive choice. I shall proceed on the basis of the assumption that Kripke intends [3] as the ultimate conclusion of the Skeptical Paradox and that, despite the apparent references to [1] and [2] as conclusions, they actually function as intermediate steps in the derivation of [3] as the ultimate conclusion. I shall try to justify this ordering in my formulation of the paradox.

What is the intended meaning of "impossible, indeed unintelligible," as used in [3]? At least four interpretations come to mind. It might be construed as: [i] "physically impossible," in the sense of conflicting with the principles of physics, [ii] "metaphysically impossible," in the sense of conflicting with the principles of metaphysics, [iii] "logically impossible," in the sense of conflicting with the principles of logic, [iv] "literally meaningless," in the sense in which, say, "XBjstZAcP" is meaningless, at least without further explanation. These categories are standard coin of contemporary philosophical usage.[38] According to the usual understanding the list is ordered in terms of decreasing exclusionary force. Thus, a larger class of propositions is excluded by [i] than by [ii], and so

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35.    KRIPKE, *supra* note 1, at 65.
36.    *Id.* at 55.
37.    *Id.* at 62 (emphasis added).
38.    *E.g.*, MICHAEL J. LOUX, THE POSSIBLE AND THE ACTUAL: READINGS IN THE METAPHYSICS OF MODALITY 27 (1979).

forth.

Kripke does not explicitly choose between these alternatives, or between any others, for that matter. He doesn't even take up the question of alternative senses of "impossible." Thus, readers must once again make an interpretive choice. [i] can be safely discarded. Nothing Kripke says suggests that the possibility of language is incompatible with the principles of physics. [iv] raises a more difficult issue. After all, [3] contains the word, "unintelligible." But Kripke's usage is probably hyperbolic. Nothing in his text suggests that assertions about the possibility of language are literally meaningless. That leaves us with a choice between [ii] and [iii]. It seems that Kripke intends a very strong sense of "impossible," a sense at least as strong as [ii]. After all, even if his use of "unintelligible" is hyperbolic, the fact that he uses such a word at all should presumably be somehow taken into account. Whether he intends an even stronger sense is an issue I can't resolve with certainty, but I don't think that a resolution is necessary. Thus, in formulating the skeptical paradox I shall use the word "impossible" to invoke *some* very strong sense of "impossibility," a sense at least as strong as that of "metaphysically impossible." I shall construe, "*all* language, all concept formation is impossible, indeed unintelligible," as equivalent to, "All language, all concept formation is metaphysically impossible."

But how should we understand *that* sentence? Should it be construed as expressing just one proposition or two? Construing it as a single proposition yields, "All language, that is, all concept formation, is metaphysically impossible." In contrast, construing it as expressing two propositions yields the interpretation, "All language is metaphysically impossible and all concept formation is metaphysically impossible." The first interpretation assumes that "language" and "concept formation" bear the same intended sense. The second assumes that they don't.

There are considerations supporting each interpretation. The fact that, as ordinarily used, "language" and "concept formation" don't have the same meaning supports the second. On the other hand, the grammatical structure of Kripke's sentence supports the first.

I choose to follow the lead of the sentence's grammatical structure. If Kripke does intend interpretation [ii] then, at best, he has chosen a potentially misleading mode of expression. Accordingly, I shall construe the conclusion of the Skeptical Paradox as, "All lan-

guage, that is, all concept formation, is metaphysically impossible."

But we haven't reached the end of our interpretive difficulties. The assumption that "language" and "concept formation" have the same intended sense leaves unanswered the question, "But what *is* that sense?"

The term "language," considered alone, can be construed in at least two ways. On the one hand, it might be understood as including within its extension any particular language, *e.g.*, English, German, and so forth. This sense could be more clearly expressed with the plural form, "languages." On the other hand, it might be understood as equivalent to, "the activity of using language," where "language" can be *any* language. I prefer the second interpretation. For, "language" does not occur alone in the sentence. It is linked with "concept formation." I have just argued that these expressions should be construed as semantically equivalent in this context. Presumably, "concept formation" means roughly, "the activity of forming concepts." Hence, it seems reasonable to conclude that "language" has the semantical force of "the activity of using a language."

Thus, my proposed formulation of the Skeptical Paradox's conclusion is, "The activity of using language is metaphysically impossible." I shall call this the *Skeptical Conclusion.*

### 2. *Is The Conclusion Of The Skeptical Paradox Self-Refuting?*

Before turning to the argument Kripke puts forward in support of the Skeptical Conclusion, I take up a difficulty appearing on the face of the conclusion itself—"The activity of using language is metaphysically impossible." The conclusion seems pragmatically self-refuting, in the sense that the very act of asserting it refutes it. For, suppose that the conclusion is true. Then both the linguistic expression of thoughts and the cognitive apprehension of linguistically expressed thoughts is metaphysically impossible. But the conclusion has just been linguistically expressed by the writer and, presumably, has just been cognitively grasped by the reader. Hence, the conclusion must be false. This appearance of anomaly is compounded by Kripke's attempt to give an argument in support of the conclusion. Any such argument must necessarily be linguistically expressed and, in order for communication to occur, readers must cognitively grasp the meaning of those linguistic expressions. But if so, the conclusion must be false. For, if it were true, there could be no linguistically formulated arguments in support of any proposi-

tion whatever.

Indeed, it seems possible to go even further. If the very act of linguistically formulating the thought that the activity of using language is metaphysically impossible refutes that very thought, then presumably the activity of using language is metaphysically possible.

Kripke's skeptic might respond by drawing a distinction. On the one hand, there is the claim that the activity of using language is metaphysically impossible, no matter how that activity might be understood. On the other hand, there is the claim that, *if* one understands the activity of using language in a certain way, *then, and only then,* would one be logically compelled to conclude that language is impossible. The skeptic might say that he intends only the latter claim. It seems that an assertion of the second kind would not be pragmatically self-refuting.

However, Kripke does not qualify the conclusion of the Skeptical Paradox in this way. Accordingly, I shall interpret the paradox as purporting to demonstrate that the activity of using language is impossible, no matter how that activity is understood.

But what about the fact that we already think we know that the conclusion of the paradox is false? Is there any point in worrying about the paradox once we realize that?

I respond by invoking the rationale traditionally offered in justification of sustained efforts for thousands of years of intellectual history to resolve paradoxes arising in logic, mathematics, physics, and philosophy.[39] A paradox can be understood as an argument with at least three characteristics: [1] It proceeds from premises which seem firmly grounded in the taken-for-granted zone of our beliefs; [ii] It moves from those premises by means of inference rules which appear self-evidently safe; [iii] It yields a conclusion we find intuitively unacceptable. In general, any successful resolution of a paradox requires a clarification of, or adjustment in, our taken-for-granted beliefs, a clarification of, or adjustment in, our accepted inference rules, or both. Such clarifications and adjustments are important because they yield insights otherwise inaccessible.

This rationale can be applied to Kripke's Skeptical Paradox. *Of course,* we already know that the conclusion is false. But the challenge is to understand *exactly where* the argument goes wrong. Ac-

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39. *E.g.,* BERTRAND RUSSELL, ON DENOTING IN LOGIC AND KNOWLEDGE 47 (Robert Charles Marsh ed., 1956); R.M. SAINSBURY, PARADOXES 1-3 (2d ed. 1995).

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quiring such an understanding would yield a deeper understanding of the nature of rules. Consider Kripke's own case. In his exposition of Wittgenstein's Skeptical Solution of the Skeptical Paradox, Kripke argues that rejecting the first premise of the paradox is a necessary condition for illuminating the relationship between mind, language and the world.

### 3.    What Is The Relationship Between The Conclusion Of The Skeptical Paradox And D'Amato's Defense Of The Radical Indeterminacy Thesis?

The details will have to wait for later, but at least this much can be said now. The argument Kripke presents for the Skeptical Conclusion contains an intermediate proposition which, in turn, D'Amato can be understood as using to support premise [2] of his Second Supporting Argument. Recall that [2] is the proposition that, for an arbitrarily selected general term, G, no amount of past usage of G can normatively justify any particular present application of G. Thus, the argument D'Amato marshalls in support of the radical indeterminacy thesis can itself be interpreted as relying upon an intermediate proposition in the derivation of Kripke's paradox. Presumably, doubts raised about the latter would justify doubts about the former. This is the general strategy I shall pursue.

### 4.    What Is The Overall Deductive Structure Of Kripke's Argument For The Skeptical Conclusion?

At this point a cautionary word to the reader is in order. Kripke's presentation of the argument for the Skeptical Conclusion takes up forty-eight pages of his text.[40] Nowhere in those pages, so far as I can see, does he purport to set out with precision the argument's deductive structure. Consequently, the explication I shall offer is not the only possible explication. Given the state of the text, any interpretation is bound to be controversial. I think that my interpretation is fair, but others may disagree.

With that qualification, I propose the following as the overall deductive structure of Kripke's argument for the Skeptical Conclusion:

[1] If the activity of using language is metaphysically possible

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40.    KRIPKE, *supra* note 1, at 6-54.

then it is metaphysically possible that there exists at least one language, L, a class of speakers of L, a class of general terms of L, and a class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms.

[2] It is not metaphysically possible that there exists at least one language, L, a class of speakers of L, a class of general terms of L, and a class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms.

[3] Hence, the activity of using language is not metaphysically possible.

I shall refer to this as the *Skeptical Argument.*

### 5. Facts Of Meaning Apprehension And Assignment

The Skeptical Argument is deductively valid. Hence, we must focus upon the truth-values of the premises, rather than upon the relationship between the premises and conclusion. But in order to ascertain those truth-values, we must first understand the phrase, "class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms." Those are my words, not Kripke's, but he has much to say about the kinds of facts the skeptic believes would have to exist in order for language to be possible.

I propose to explicate Kripke's various comments in the following way. Let L be a language. Let S be a member of the class of speakers of L. Let G be a member of the class of general terms of L. Then f is a *fact of meaning apprehension and assignment with respect to L, S and G* if and only if:

[1] f consists of a particular past or present mental act, MA, of S, together with a particular situation, SIT, in which MA occurs, where both MA and SIT are simultaneously existing temporal entities.

[2] In f, S interprets the general term, G, by correlating it with a semantical normative rule, R, expressible in the general form, "In circumstances of type, C, it is justifiable to apply G."

[3] R normatively determines a proper subset of all possible applications of G as justifiable applications.

[4] With respect to the general term, G, the meaning of the expression, "circumstances of type, C," is explicable in terms of a set of instantiables [i.e., characteristics, properties, features, universals, attributes, etc.], the instantiation of which by an entity or state

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of affairs justifies an application of G.[41]

[5] In f, S either (i) applies R with an awareness that R is being applied, but without explicitly formulating it, or (ii) applies R with an awareness that R is being applied and explicitly formulates it, or (iii) explicitly formulates R in f, but does not apply it.

[6] In f, S understands the semantical correlation between G and R, either as being effected solely by S's own choice, either at that moment or in the past, or as having been established by the linguistic practices of S's community.

Upon the basis of this explication of the concept of a single fact of meaning apprehension and assignment existing for a particular speaker's use of a particular general term, it is possible to introduce the concept of the class of facts of meaning apprehension and assignment existing for a particular speaker's use of a particular general term. I shall say that the class of all the facts of meaning apprehension and assignment existing with respect to a language, L, a particular speaker, S, of L and a particular general term, G, of L, is an *individual-speaker's class of facts of meaning apprehension and assignment with respect to the general term, G.*

It is then possible to introduce the concept of the class of facts of meaning apprehension and assignment existing for a particular speaker's use of the class of general terms of her or his language. Thus, given a particular speaker, S, of L, the class of all S's individual-speaker's classes of facts of meaning apprehension and assignment with respect to every member of the class of general terms of L is an *individual-speaker's class of facts of meaning apprehension and assignment with respect to the entire class of general terms of L.*

Summarizing, facts of meaning apprehension and assignment consist of temporally specific mental acts in which instantiables are correlated with general terms in temporally specific situations by means of normative semantical rules. An example may help.

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41. By "instantiable" I intend to refer to multiply-exemplifiable entities which are: (i) mind-independent, in the sense that their existence does not depend upon the occurrence of any mental event and (ii) language-independent, in the sense that their existence does not depend upon linguistic facts, such as linguistic conventions, uses, etc. Thus, I presuppose a version of metaphysical realism about universals, as contrasted with nominalistic or conceptualist accounts. I shall not undertake here any defense of metaphysical realism. However, I think that strong contemporary defenses are available. *E.g.*, D.M. ARMSTRONG, UNIVERSALS: AN OPINIONATED INTRODUCTION (1989); GEORGE BEALER, QUALITY AND CONCEPT (1982); REINHARDT GROSSMAN, THE EXISTENCE OF THE WORLD: AN INTRODUCTION TO ONTOLOGY 14-45 (1992); MICHAEL J. LOUX, METAPHYSICS: A CONTEMPORARY INTRODUCTION 19-89 (1998).

Suppose that last Thursday S correlated the word-type, "whorse," to the instantiable, {being a white horse}. With respect to clause [1] of the definition of "fact of meaning apprehension and assignment," that choice is a particular past mental act, MA, of S, occurring in a particular situation, SIT. With respect to clause [2], "whorse" is interpreted in MA and SIT by being correlated with a normative semantical rule, R, of the form, "In circumstances in which there is a white horse, it is justifiable to apply the word "whorse" to the horse." With respect to clause [3], R normatively determines a proper subset of all possible applications of "whorse" as justifiable, namely, those in which there is a white horse. With respect to clause [4], the meaning of "circumstances in which there is a white horse" is explicated in terms of the instantiable, {being a white horse}. With respect to clause [5], R is explicitly formulated by S, but not applied. With respect to clause [6], S understands the semantical correlation as having been effected by her own choice. Other examples can be easily imagined.

Many things could be said about these formulations. I shall mention six. The first is that they are mine, not Kripke's. He proposes no general formulation at all, much less any of these. Nevertheless, I believe they are fair generalizations from the many remarks he makes about the matter.[42]

Second, the entities characterized as "facts of meaning apprehension and assignment" consist of particular mental-act tokens, together with the particular situations in which they occur. They are not Platonic entities.[43] Thus, the question raised by the Skeptical Argument is not whether there are, say, timeless Fregean functions, picking out their own values. The question is rather whether there are specific mental acts of speakers, occurring in specific situations, serving to normatively fix their future applications of general terms.[44]

Third, both the mental acts, (MA-1,...), and their corresponding contextual situations, (SIT-1,...), are temporal entities. Their identities are functions of their times of occurrence. Thus, they are intrinsically temporally-indexed entities. I shall take notational

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42. In arriving at this formulation I have relied upon comments made on at least the following pages of KRIPKE, *supra* note 1, at 7-13, 15, 17, 23, 24, 37, 43, 52, 54, and 107.

43. *Id.* at 52, 54.

44. However, I shall later argue that instantiables, understood as multiply-exemplifiable entities, play an essential role in facts of meaning apprehension and assignment.

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recognition of this by referring to such mental acts and their corresponding contextual situations by means of the forms, MA[...] and SIT[...], where the empty spaces between the brackets are available for being filled with references to times of occurrence. In those cases in which I refer to mental acts and their situations generically, I shall omit specific temporal references, leaving the open spaces blank. On the other hand, when I refer to particular acts or situations, I shall insert temporal designations.

However, in stressing their temporal nature I do not intend to exclude the possibility of their sharing constituents, in a certain sense. For example, suppose that last Monday S referred to Dobbin as a "whorse," and then again on the following Tuesday. According to my proposed usage, the fact of meaning apprehension and assignment occurring on Monday is distinct from the fact occurring on Tuesday. But their ontological distinctness does not preclude their sharing the same animal and at least one of the same instantiables. I shall later pursue the relevance of this point for the Skeptical Argument.

Fourth, with respect to any particular speaker, S, of L, and any particular general term, G, of L, S's individual-speaker's class of facts of meaning apprehension and assignment with respect to G is also a temporally indexed entity. At any given moment, the composition of this class is a function of S's past and present usage of G.

Fifth, the explications focus upon the cognitive apprehension and assignment of meanings in contexts in which semantical rules are applied, explicitly formulated, or both. But obviously there are contexts of other kinds in which such facts may occur. For example, speakers may explore the entailments of statements, explicate the meanings of general terms, and so forth. So, there is a sense in which the definitions are too narrow. But I do not think it matters. The contexts singled out by the definitions are Kripke's primary concern and it seems reasonable to conform my focus to his.

A sixth observation concerns an additional respect in which the definitions might be regarded as too narrow. They focus upon the case of a single member of a linguistic community. This observation suggests the possibility of generalizing the discussion to accommodate the case of an entire linguistic community. A necessary condition for the existence of a linguistic community is a set of shared meanings. A class of speakers sharing only a set of syntactic types could not be plausibly characterized as constituting a linguistic community at all. For example, suppose that speaker, S-1, corre-

lates "apple" to the instantiable, {being a real number}, speaker, S-2, correlates "apple" to the instantiable, {being an electron}, speaker, S-3, correlates "apple" to the instantiable, {being a trout}, and so on, for all speakers and all general terms.  There would be no semantical overlap at all between the meanings assigned to any given general term.  Such a class of speakers could not be plausibly described as sharing a language.

But that would be an extreme, and therefore an easy, case to classify.  The real challenge is to specify, with some significant degree of precision, the required degree of overlap between semantical norms invoked by distinct speakers.  It seems that complete identity of norms across the entire class of speakers is not necessary, perhaps not even possible.  But exactly how much non-overlap is allowable?  This is a difficult question, one for which I don't have a ready answer.  But I propose to proceed without one.  The Skeptical Argument does not trade upon the possibility that the intended meaning one speaker ties to a term differs from the intended meaning another speaker ties to it.  Rather, it focuses upon the relationship any particular speaker has with her or his *own* intended meanings.  Thus, it is possible to coherently address the Skeptical Argument without having in hand a resolution of the question of minimally-required degrees of semantical overlap.

Perhaps the following will do for the moment.  I shall say that there is a *communal class of facts of meaning apprehension and assignment with respect to a language, L, the class of speakers of L, and the class of general terms of L* if and only if [i] For each speaker, S, there is an individual-speaker's class of facts of meaning apprehension and assignment with respect to the entire class of general terms of L; and [ii] There is sufficient overlap[45] between these classes to make communication between the speakers possible.

The intended meaning of the phrase, "class of facts of meaning apprehension and assignment with respect to L, those speakers and those general terms," as it occurs in the Skeptical Argument, can then be clarified by identifying "class of facts" with "communal class of facts," as that latter phrase has just been explicated.  However, as just noted, the Skeptical Argument does not invoke the full implicational force of "communal class."  Any such classes presuppose individual speakers' classes of facts of meaning apprehension and assignment.  As I shall bring out, Kripke's case for the Skeptical

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45.    Of course, this is just a promissory note.

Argument invokes only the latter.

### 6. *Facts Of Meaning Apprehension And Assignment Have Present Normative Semantical Force*

I wish to emphasize a point implicit in the foregoing definition of, "fact of meaning apprehension and assignment," especially in clauses [2], [3] and [4]. There is a sense in which such facts, if any exist, would have *present normative semantical force* for those speakers whose facts they are. I shall briefly sketch the matter now and later return to it in greater detail.

In general, a past fact in a person's life has present normative force for that person if that fact relevantly bears upon the question, "What should I do now?" The point can be made by saying that a past fact has *present normative force* for an individual if, in virtue of that fact, she or he has a reason for believing[46] some normative proposition about her or his course of action in the present situation. That is, it would be justifiable for the individual to believe a particular normative proposition, because the past fact was what it was. By "normative proposition" I mean a proposition expressible in forms such as, "It would be justifiable to do X," "It would not be justifiable to do X," "It would not be justifiable not to do X," and so forth.

Some examples may help. [1] Suppose that yesterday I promised my daughter that I would today accompany her to a performance of Bach's Mass in B-Minor. In virtue of having made that promise, I have a reason for believing that it would not be justifiable for me to refuse to go with her to the concert. It would be at least prima facie justifiable for me to believe that I ought to accompany her, because I promised to do so. [2] Suppose that yesterday I bought a fishing license. Today I am considering going fishing. In virtue of my having obtained a fishing license yesterday, I now have a reason for believing that it would be justifiable for me to go

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46. In the sense in which I use the expression, "has a reason for believing," a person may have a reason for believing something, even though that person may be unaware at the moment of the existence of the reason. I follow Joseph Raz here in identifying reasons with *facts*, rather then with *beliefs*. JOSEPH RAZ, PRACTICAL REASON AND NORMS 15-20 (1990). Note especially his remark at 18: "Only reasons understood as facts are normatively significant; only they determine what the world is *like*, and not what our thoughts are like. To decide what we should do we must find what the world is like." Raz's discussion concerns reasons for action, rather than reasons for belief. However, I think that his arguments in favor of identifying reasons for action with facts apply equally as well to reasons for belief.

fishing. It would be at least prima facie justifiable for me to believe that it would be justifiable to go fishing, because I bought a fishing license yesterday. [3] Suppose that yesterday an acquaintance persuaded me to reveal my thoughts about a sensitive matter involving a third party. My acquaintance assured me that what I said would be held in confidence. Shortly thereafter, I learned that my acquaintance immediately told the third party what I had said. This acquaintance has just now asked me to express my thoughts about another sensitive matter. In virtue of my past interactions with my acquaintance, I now have a reason to believe that it would be justifiable for me to refuse to say anything. It would be at least prima facie justifiable for me to believe that I should say nothing.

How does this concept of present normative force apply to the topic at hand? Suppose that I have been using a general term, G, in a certain way and that my usage is expressible in a proposition of the form, "In circumstances of type, C, it is justifiable to apply G." I find myself in a particular situation and am asked whether G applies. Presumably, I should be willing to say that it would be justifiable for me to apply G if and only if the conditions, C, are satisfied. My past acts of using G in a certain way, as opposed to other possible ways, would have *present normative semantical force for me*, in the sense that, if the present circumstances are of type, C, then I would have a reason for believing that I would be justified in applying G in those circumstances, and if those circumstances are not of type, C, then I would have a reason for believing that I would not be justified in applying G. In short, past facts of meaning apprehension and assignment have present normative semantical force for the speaker whose facts they are, in the sense that, in virtue of those facts, the speaker has a reason for drawing normative conclusions with respect to questions of the form, "Would it be justifiable to apply G in the present situation?"

The matter can be put more precisely. Let L be a language, S, a speaker of L and f, a past fact of meaning apprehension and assignment in which S interpreted G by correlating it with a rule, R, where R is expressible as, "In circumstances of type, C, it is justifiable to apply G." Let SIT[present] be a present situation with respect to which the question whether G applies is raised. Then f has present normative semantical force in SIT[present] in the following sense: [1] If conditions, C, are satisfied in SIT[present], then, in virtue of f, S would have a reason for believing that applying G in SIT[present] would be justifiable. That is, it would be justifiable

for S to believe that applying G in SIT[present] would be justifi-
able, because so applying it would be in accordance with S's cogni-
tive understanding of G in f. [2] On the other hand, if conditions,
C, are not satisfied in SIT[present], then, in virtue of f, S would
have a reason for believing that applying G in SIT[present] would
be unjustifiable. That is, it would be justifiable for S to believe that
applying G in SIT[present] would not be justifiable, because so ap-
plying it would not be in accordance with S's cognitive understand-
ing of G in f.

### 7. *The Argument For Premise [1] Of The Skeptical Argument*

What about the truth-values of the premises of the Skeptical
Argument? I begin with Kripke's account of the skeptic's case for
premise [1] ["If the activity of using language is metaphysically pos-
sible then it is metaphysically possible that there exists at least one
language, L, a class of speakers of L, a class of general terms of L,
and a class of facts of meaning apprehension and assignment with
respect to L, those speakers, and those general terms."] I haven't
found any passage which purports to set out a precisely-stated ar-
gument for [1]. But I think that such an argument can be con-
structed on the basis of several passages, strung together.[47] That
argument can be sketched as follows:

[1]Assume that the activity of using language is metaphysi-
cally possible.

[2]Necessary conditions for the existence of the activity of
using language are:

[a]A particular language, say, L,

[*Justification*: How could the activity of using language exist
without at least one language?]

[b]A class of speakers of L,

[*Justification*: How could the activity of using a language, L,
exist without speakers of L?]

[c]A class of general terms of L,

[*Justification*: How could L even qualify as a language unless it
contains general terms? Any language requires devices for refer-
ring to things and devices for predicating things of things to which
references are made. The first requirement necessarily involves re-
ferring expressions. The second necessarily involves general

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47. I cannot claim any single passage in support of this argument. Among
those I have relied upon are those cited in footnote 42.

terms.]

[d]A class of facts of meaning apprehension and assignment with respect to L, L's speakers, and L's general terms.

[*Justification:* The intelligible use of a class of general terms by a community of speakers requires criteria for distinguishing justifiable from unjustifiable applications of those terms. For example, suppose that no one in a particular community has any understanding of what horses are, of how horses can be distinguished from anything else, or of what circumstances justify the application of the word, "horse." In such a situation, "horse" (semantically tied to its conventional meaning) would not belong to the class of general terms used by that community. Such criteria, in turn, require normative semantical rules in whose terms the distinction between justifiable and unjustifiable applications of terms can be drawn. Such normative rules, in turn, can be effectively used by a community of speakers only if the members cognitively apprehend those norms in specific mental acts.]

[3]Hence, those necessary means are metaphysically possible.

The overall structure of the argument is: [i] P is possible. [ii] P entails Q. [iii] Hence, Q is possible. The structure is deductively valid and the premises seem plausible.

### 8. *The Argument For Premise [2] Of The Skeptical Argument*

I move on to Kripke's case in support of premise [2] of the Skeptical Argument, "It is not metaphysically possible that there exists at least one language, L, a class of speakers of L, a class of general terms of L, and a class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms."

Obviously, there is a sense in which [2] is the denial of a complex assertion, an assertion which itself consists of a conjunction of assertions—that it is possible for a language to exist, that it is possible for an associated class of speakers to exist, that it is possible for an associated class of general terms to exist, and that it is possible for an associated class of facts of meaning apprehension and assignment to exist. The reader naturally wants to ask whether Kripke's skeptic intends to deny all of these conjuncts, or something less than all.

Kripke's account strongly suggests that the skeptic directs his major challenge to the assertion of the possible existence of an as-

sociated class of facts of meaning apprehension and assignment. What about the other conjuncts? I think that the skeptic assumes that the others would be necessarily refuted by a refutation of the assertion about facts of meaning apprehension and assignment. If that's correct, then it would be a mistake to construe [2] as denying a conjunction of logically-unrelated assertions. Rather, it should be construed as denying a conjunction of logically-related claims. Accordingly, although there is a sense in which the heart of [2]'s negative focus is the assertion concerning facts of meaning apprehension and assignment, the skeptic assumes that if that assertion fails, so must the others. That is, if it is not possible for there to be facts of meaning apprehension and assignment, then it is not possible for there to be a language, speakers, or general terms. So,      I shall proceed upon the interpretive assumption that the skeptic's primary claim is that facts of meaning apprehension and assignment could not exist. How *exactly* does that argument go? I shall begin with a drastically abbreviated paraphrase of Kripke's own account and then follow it with my own attempt at a more precise formulation.

### a.   A Paraphrase Of Kripke's Account Of The Argument For Premise [2] Of The Skeptical Argument

One can take a step in the direction of identifying the argument's structure by beginning with Kripke's remark, "In fact, it seems that no matter what is in my mind at a given time, I am free in the future to interpret it in different ways."[48]

In order to understand the import of this, it is helpful to examine Kripke's discussion of an example.[49] The example is mathematical but, as he observes, it can be modified to apply to any nonmathematical use of language, as well.[50] Suppose that there exists a language, L, with an associated class of speakers. Let S be one of them. Suppose that S has learned how to add positive integers. Presumably, that means, at the very least, that S has accomplished at least two things: [i] she has cognitively grasped the addition-function in terms of a rule for adding arbitrary pairs of integers, and [ii] she has semantically correlated that function to at least one particular term of L, say, "plus."

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48.   Kripke, *supra* note 1, at 107.
49.   The following account of Kripke's argument is based upon *id.* at 7-54.
50.   *Id.* at 19.

One's prephilosophical assumption is that the addition-function yields values for all possible pairs of positive integers, x and y, no matter how large. Of course, at any given time, S has actually computed only a finite set of values for that function. Nonetheless, S's natural assumption, and ours as well, is that the rule she cognitively apprehended in the past somehow stands ready to determine[51] correct answers to every one of the indefinitely many sums she might possibly calculate in the future. As Kripke puts it, "This is the whole point of the notion that in learning to add I grasp a rule; my past intentions regarding addition determine a unique answer for indefinitely many new cases in the future."[52]

Suppose that S has calculated values for the addition-function for only those cases in which x and y are each less than, or equal to, 56. Thus, S has never before calculated the value of the function for the case, x = 68 and y = 57. Suppose that S now computes that case for the first time, deriving the answer, 125, with a sense of subjective certainty that it is correct, in at least two senses. First, it is correct in the "arithmetical"[53] sense: 125 is the value of the addition-function for the case, x = 68 and y = 57. Second, it is correct in the "metalinguistic"[54] sense: The term "plus," as S has intended to use it in the past, is semantically correlated to the addition-function, the very function whose value for the case, x = 68 and y = 57, is 125.

Suppose that a skeptic now challenges S's sense of certainty about the "metalinguistic" correctness of her answer. The skeptic suggests that, perhaps, as S has been using "plus" in the past, her answer should be 5, rather than 125. The skeptic notes that S's confidence in the answer, 125, could not be based upon any explicit instructions for that particular case she ever gave herself—instructions of the form, say, "The answer to the question, 'What is 68 plus 57?' is 125." For, by assumption, S has never before computed the value of the function for this particular case.

S may counter with the assertion that what she *has* done in the past was to semantically correlate a particular function with the syntactic type, "plus," and that, in order to remain true both to the mathematical essence of that function and to that metalinguistic correlation, she must *now* give the answer, 125.

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51. *Id.* at 7.
52. *Id.* at 7-8.
53. *Id.* at 8.
54. *Id.*

The skeptic responds by asking S how she can be certain as to *which* particular function she correlated to "plus." After all, prior to computing the addition-function for the case, x = 68 and y = 57, S had calculated only a finite number of cases of the function. Perhaps what S actually did in the past was to semantically correlate "plus," not to the addition-function, but rather to the "quus-function,"[55] where the quus-function is defined as: x quus y = x plus y, if x and y are each less than 57, and x quus y = 5, in all other cases. The skeptic challenges S by asking, "How can you be certain that you *didn't* semantically tie "plus" to the quus-function?" Thus, the skeptic asks S whether she is *now* misinterpreting her own *past* linguistic usage. Perhaps, whenever S used the word "plus" in the *past*, she intended to invoke the quus-function, rather than the addition-function, and has *now* come to misinterpret her own *past* linguistic usage. There would presumably be indefinitely many possible explanations for such a misinterpretation, if one has occurred. S may be temporarily insane, in a drug-induced state of disorientation, and so forth.

It is important to realize that the skeptic is not raising the possibility that S has made a *mathematical* mistake, but rather that she has made a *metalinguistic* mistake, a mistake about her own past linguistic usage.[56] Perhaps S made each *prior* computation with the quus-function, rather than the addition-function, in mind. The hypothesis that she did exactly that is consistent with all her previous computations. For, the outputs of the two functions are the same for every case in which x and y are each less than 57.

The skeptic concedes that the probability of S's making such a mistake may be extremely low, but maintains that it is nonetheless a logical possibility. But if it is a logical possibility, and if the quus-hypothesis is false, then there must exist *some fact* about S's past usage of "plus" which can be invoked to "refute"[57] that hypothesis. That is, there must be some fact in S's own mental history which somehow consisted in her intending ("meaning"[58]) by "plus" the addition-function, as opposed to the quus-function. But if no such fact exists, then, in computing 68 plus 57, S is making an "unjustified leap in the dark"[59] rather than following any "directions"[60] she

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55.  *Id.* at 9.
56.  *Id.*
57.  *Id.*
58.  *Id.* at 11.
59.  *Id.* at 10.

once gave herself, directions which would "uniquely determine"[61] 125 as the correct answer. In the absence of such a fact, any answer S now gives is completely "arbitrary."[62]

What sort of fact would be required? According to the skeptic, it would have to satisfy two conditions. [1] It must be a fact about S's mental history which constitutes her having intended to use the addition-function, as opposed to the quus-function, (or any other function, for that matter). [2] It must be a fact which "justifies"[63] the answer, 125, in the sense of consisting of "directions"[64] which somehow "contain"[65] the answer, 125, to the question, "What is 68 plus 57?", as well as the answers to *all* questions of the form, "What is the sum of x plus y, for an arbitrary x and y?" In short, such a fact would have to be a fact of "meaning apprehension and assignment" in the sense I have articulated.

Now the skeptic makes the decisive move. There could be no such fact. S's past mental acts invoking "plus" can be divided into two classes, for present purposes anyway. First, there are those acts (and there may be only one) in which S semantically tied "plus" to an algorithm for computing the addition-function. Second, there are those acts in which S used that algorithm to compute values of the addition-function for particular cases. But no fact of either kind could be a fact of meaning apprehension and assignment.

Consider the second class, the prior computations. The skeptic takes himself to have already shown that all of S's previous calculations with "plus" are "equally compatible"[66] with the hypothesis that she has always previously tied "plus" to the quus-function[67] and that she therefore ought to give the answer, 5, instead of 125. Hence, no mental act belonging to the second class could be a fact of meaning apprehension and assignment.

Consider the first class, those in which S internalized a linguistic formulation of an algorithm for computing the addition-function. At this point, the reader might well suppose that the investigation has finally wandered into an area of possible relevance. Surely, the reader might think, if facts of meaning apprehension

60. *Id.*
61. *Id.*
62. *Id.* at 11.
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.* at 15.
67. *Id.*

and assignment exist at all, they must take the form of linguistic formulations of rules. Indeed, the reader might have grown impatient with all this talk about prior computations. Of course, *those* couldn't suffice as acts of meaning apprehension and assignment. As Kripke puts it, "It is this set of directions, not the finite list of particular additions I performed in the past, that justifies and determines my present response."[68]

Suppose that S learned such a rule by memorizing the words: "Take a large number of marbles. Count out x marbles and set them aside. Count out y marbles and set them aside. Put the two collections together and count out the number of marbles thus formed. The result is x + y."[69] Suppose that S now maintains that it is this past mental act of memorization which normatively determines the answer, 125. For, application of that algorithm to this particular case *requires* that answer. Count out 68 marbles in one heap. Set them aside. Count out 57 marbles in another heap. Set them aside. Combine the two heaps and count the total. The total number of marbles counted, assuming no mistakes, is, necessarily, 125.

But the skeptic has a ready response. S's claim would be true if she has been using "count" in the "standard"[70] way. But, necessarily, S has used "count" only a finite number of times. The skeptic now questions S's present interpretation of her past uses of "count," just as he has done with respect to her past uses of "plus." The skeptic suggests the possibility that S has been semantically tying "count" to the activity of *quounting,* where "quounting"[71] a heap is counting it in the ordinary sense, except when the heap is formed as the union of two heaps, at least one of which has 57 or more parts. In the latter case one must always give the answer, 5.[72]

The skeptic's overall strategy is now obvious. If S tries to support any particular application of "plus" by recourse to another word, say, "count," the skeptic immediately challenges that recourse by raising the logical possibility that S is now misinterpreting her own past usage of *that* word.[73] The dialectic is potentially end-

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68. *Id.* at 15-16.
69. This is a paraphrase of *id.* at 15.
70. *Id.* at 16.
71. *Id.*
72. The skeptic assumes here that S has never previously applied the word "count" to heaps created by combining two sub-heaps, either of which has 57 or more parts. Of course, there must necessarily be some such limit.
73. KRIPKE, *supra* note 1, at 16.

less. Any attempt S makes to justify her initial answer, 125, must itself be expressed in words, and any attempt to prove that those words are adequate to the task must be expressed in terms of yet other words, and so forth. Every word in any such indefinitely long sequence is susceptible to the skeptical challenge, "Can you be certain that you are not now misinterpreting your own past linguistic usage?"

At this point in the dialectic, the skeptic extends his focus from a consideration of S's past linguistic intentions to her present intentions. The skeptic thinks that he has shown that everything in S's mental history is just as "compatible"[74] with the hypothesis that by "plus" she meant the addition-function as it is with the hypothesis that she meant the quus-function. Hence, there could be no "fact"[75] in S's past mental history which constituted her intending the addition-function, as opposed to the quus-function. That is, there is nothing in S's mental history which "establishes"[76] whether she meant one or the other. But the very same line of reasoning can be applied to S's *present* linguistic intentions. If there could be no such past fact as S's intending the addition-function, rather than the quus-function, then neither could there be any such present fact. As Kripke puts it,

> When we initially presented the paradox, we perforce used language, taking present meanings for granted. Now we see, as we expected, that this provisional concession was indeed fictive. There can be no fact as to what I mean by 'plus,' or any other word at any time. The ladder must finally be kicked away.[77]

But if no such fact can exist, then no particular response S makes to a question such as, "What is 68 plus 57?" is any more justified than any other.

The skeptic concludes that there could be nothing in S's mind in the past, now, or ever, which "instructs"[78] her as to what she "ought"[79] to say in all possible cases of "plus." For, suppose that S looks into her own consciousness for such instructions. She would not find the infinitely many values of the addition-function. Ap-

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74. *Id.* at 21.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.* at 22.
79. *Id.*

pealing to any "general rule"[80] for the function serves, at best, only to shift the skeptic's focus to other "rules"[81] which, in their turn, S has applied in only a finite number of cases. Thus, there is nothing, and could be nothing, in S's mind at *any* time which she could "make use of in the future"[82] in applying the word. The very "idea of meaning vanishes into thin air."[83]

### b.    Comments About The Paraphrase

So much for my paraphrase of Kripke's account of the skeptic's case for premise [2] of the Skeptical Argument. Of course, it's interesting, but what *precisely* is its deductive structure?   I shall shortly offer an explication. However, before attempting that, I want to mention two things about the argument.

I assume that the typical reader comes away from a reading of my paraphrase or, for that matter, from a reading of the corresponding pages in Kripke's text, with a strong impression that the argument depends in *some* crucial way upon two assumptions: [i] that the hypothetical speaker has used the word in question only a finite number of times and [ii] that the particular application of the word is a "new" one in the sense that the speaker has never before considered it.   I shall refer to these assumptions as the *finiteness-assumptions*.   My paraphrase stresses both, and it does so because Kripke's own account of the argument does.   He mentions the finiteness-assumptions at least ten times.[84]   Thus, the reader is presumably surprised upon arriving at footnote 34, page 52, where Kripke observes that *neither* assumption is essential to the argument:

> It is worth noting, however, that although it is useful, following Wittgenstein himself, to *begin* the presentation of the puzzle with the observation that I have thought of only finitely many cases, it appears that in principle this particular ladder can be kicked away.  Suppose that I had explicitly thought of *all* cases of the addition table.  How can this help me answer the question '68 + 57'?  Well, looking back over my own mental records, I find that I gave myself explicit directions.  "If you are ever asked about '68 + 57,' reply '125'!"  Can't the skeptic say that these directions,

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80.  *Id.*
81.  *Id.*
82.  *Id.*
83.  *Id.*
84.  *Id.* at 8, 15, 16, 17, 18, 22, 26, 28, 32, 34.

too, are to be interpreted in a non-standard way?

Thus, any formulation of the argument which includes the finiteness-assumptions would seriously misrepresent it. Accordingly, I shall offer an explication which does not rely upon either of them.[85]

A second qualification concerns the paraphrase's stress upon the issue of the reliability of memory. As presented, the argument seems to rest upon the assumption that it is possible for a speaker to have in the past given a general term a semantical interpretation differing from the interpretation she now gives the term, but to have forgotten her prior usage. Indeed, that seems to be the whole point of the skeptic's challenge to S's "metalinguistic" certainty. As before, my paraphrase follows closely Kripke's own exposition in this regard. His stress upon the possibility of forgetting one's own past linguistic usages gives the impression that the skeptic's argument is an instance of Humian-like reflections about the fallibility of memory: "How can I ever know for sure that I am using words in the way in which I have used them in the past? Isn't it always possible that I have forgotten my own past interpretations?" Nevertheless, Kripke eventually states explicitly that his argument does not essentially involve any skeptical challenge to the reliability of memory. Thus:

> Of course, the problem can be put equivalently in terms of the sceptical query regarding my present intent: nothing in my mental history establishes whether I meant plus or quus. So formulated, the problem may appear to be epistemological - how can anyone know which of these I meant? Given, however, that everything in my mental history is compatible both with the conclusion that I meant plus and with the conclusion that I meant quus, it is clear that the sceptical challenge is not really an epistemological one. It purports to show that nothing in my mental history of past behavior—not even what an omniscient God would know—could establish whether I meant plus

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85. It might be supposed that [ii] is entailed by [i], especially given Kripke's explanation. However, I do not think that there is any entailment. It seems possible to imagine a situation satisfying [i], but not [ii]. For example, suppose that the hypothetical speaker has previously performed an infinite number of mental acts in which, say, 5 is added to 4. [i] would be satisfied because there would have been an infinite number of prior facts of meaning apprehension and assignment. But, presumably, [ii] would not have been satisfied because none of those prior facts would have involved the question, "What is the sum of 68 and 57?"

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or quus.[86]

Accordingly, I shall offer an explication of the Skeptical Argument which does not call into question the reliability of memory.

### c. A Reconstruction Of Kripke's Account Of The Argument For Premise [2] Of The Skeptical Argument

Here then is my proposed reconstruction[87] of the skeptic's argument for premise [2] of the Skeptical Argument, free of the ladders Kripke asks us to kick away:

[1] Assume, for *reductio* purposes, that it is metaphysically possible that there exists at least one language, L, a class of speakers of L, a class of general terms of L, and a class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms.

[2] Then, by the definition of "class of facts of meaning apprehension and assignment" [See Section D.5.], it is metaphysically possible that there exists at least one member, S, of the class of speakers of L, at least one general term, G, of L, and at least one entity, f, such that:

[a] f consists of a past or present mental act, MA[...], of S, together with a corresponding contextual situation, SIT[...], in which MA[...] occurs, where both MA[...] and SIT[...] are simultaneously existing temporal entities.

[b] In f, S interprets the general term, G, by correlating it with a semantical normative rule, R, expressible in the general form, "In circumstances of type, C, it is justifiable to apply G."

[c] R normatively determines a proper subset of all possible applications of G as justifiable applications.

[d] With respect to the general term, G, the meaning of the expression, "circumstances of type, C," is explicable in terms of a set of instantiables [i.e., characteristics, properties, features, universals, attributes, etc.], the instantiation of which by any given entity or state of affairs justifies an application of G.

[e] In f, S either (i) applies R with an awareness that R is be-

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86. KRIPKE, *supra* note 1, at 21 and 39.

87. I shall not attempt to put the reconstruction into completely explicit formally valid form because I don't think it necessary for my purposes. *Whatever* the ultimate deductive structure turns out to be, it would have to include at least step [21], which I shall argue against in Section E.3 below.

ing applied, but without explicitly formulating it, or (ii) applies R with an awareness that R is being applied and explicitly formulates it, or (iii) explicitly formulates R in f, but does not apply it.

[f]In f, S understands the semantical correlation between G and R, either as being effected solely by S's own choice, at that time or in the past, or as having been established by the linguistic practices of S's linguistic community.[88]

[3]Let {f-1,...,f-n} be the set of all past facts of meaning apprehension and assignment with respect to one of those possible speakers, S, and some particular possible general term, G, where n is greater than, or equal to, 0, and may be finite or infinite.[89]

[4]Suppose that, in every member of {f-1,...,f-n}, S interpreted G by correlating it with a single semantical normative rule, R, expressible as, "In circumstances of type, C, it is justifiable to apply G," for some particular set of conditions, C.

[5]Each member of {f-1,...,f-n} has present normative semantical force for S. [See Section D.6.]

[6]Hence, for each member, f-i, of {f-1,...,f-n} the following holds: If conditions, C, are satisfied in the present situation then, in virtue of f-i, S would have a reason for believing that an application of G in the present situation would be justifiable. [See Section D.6.]

[7]Suppose that S is now called upon to determine whether G is applicable to a present situation, SIT[present], in which circumstances of type, C, obtain.

[8]Each member, f-i, of {f-1,...,f-n} is such that, in virtue of f-i, S would have a reason for believing that applying G in SIT[present] would be justifiable. [See [6] and [7].]

[9]Consider an arbitrarily selected member, say, f-i, of {f-1, ...,f-n}.

[10]By the definition of "facts of meaning apprehension and assignment" [See Section D.5.], f-i consists of a past mental act, MA[past, at i], together with a corresponding past contextual situa-

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88. Note that I have not used the full implicational force of the definition. In particular, I have not used its implications concerning semantic agreement among speakers in a linguistic community. This limitation is in accordance with my earlier remarks about the fact that the Skeptical Argument does not purport to raise doubts about intersubjective semantical agreement. Rather, it raises a more radical challenge concerning the relationship between any given speaker and that speaker's own semantical norms.

89. 1,...,n are the temporal indices of the past facts, ordered from earlier to later.

tion, SIT[past, at i], in which S either (i) applied R with an awareness that R was being applied, but without explicitly formulating it, or (ii) applied R with an awareness that R was being applied and did explicitly formulate it, or (iii) explicitly formulated R in f, but did not apply it.

[11]Consider case (i).

[12]It is possible for S to now interpret f-i as a past fact in which S semantically correlated G, not to R, but rather to the normative semantical rule, R*, where R and R* both normatively provide that G applies in every situation in which S has applied G in the past, SIT[past, at...], but differ with respect to SIT[present], in the sense that R provides that G applies in SIT[present], whereas R* provides that G does not apply in SIT[present].

[13]By way of abbreviation, I shall express the possibility formulated in [8] as, "It is possible for S to now give f-i a *nonstandard interpretation.*"

[14]Consider case (ii).

[15]As in case (i), it is now possible for S to give f-i a nonstandard interpretation.

[16]Consider case (iii).

[17]As in cases (i) and (ii), it is now possible for S to give f-i a nonstandard interpretation.

[18]Hence, in every case, it is now possible for S to give f-i a nonstandard interpretation.

[19]But f-i was an arbitrarily selected member of {f-1,...,f-n}.

[20]Hence, for every member of {f-1,...,f-n}, it is possible for S to now give that member a nonstandard interpretation.

[21]But if [20] is true, then none of the members of {f-1, ...,f-n} has present normative semantical force for S.

[22]Hence, none of the members of {f-1,...,f-n} has present normative semantical force for S. [See [20] and [21].]

[23]Hence, none of the members, f-i, of {f-1,...,f-n} is such that, in virtue of f-i, S would have a reason for believing that applying G in SIT[present] would be justifiable. [See [22] and Section D.6.]

[24][23] contradicts [8].[90][91]

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90. This is a very strong form of contradiction. [23] goes beyond the simple negation of [8].

91. Actually, a contradiction was already generated at [22], which contradicts [5]. I have extended the derivation in order to highlight more sharply the issue upon which I want to focus.

[25]Hence, the *reductio* premise, [1], is false.

### d. *Preliminary Clarification Of The Reconstruction*

I shall make two points about the reconstruction by way of preliminary clarification.

First, as promised, it does not raise skeptical doubts about the reliability of S's memory. [12], [15], [17], [18] and [20] simply assert the possibility of S's now giving nonstandard interpretations of her own past facts of meaning apprehension and assignment. They make no mention of the possibility of S's having previously adopted nonstandard interpretations and then forgetting having done so.

Second, as also promised, it does not depend upon either of the two finiteness-assumptions mentioned earlier. Recall that the first is the assumption that the hypothetical speaker has used the general term in question only a finite number of times. In contrast, [3] explicitly allows for the possibility of an infinite number of past facts of meaning apprehension and assignment.

The second finiteness-assumption is the assumption that the particular application of the general term in question is "new," in the sense that the speaker has never before considered it. Thus, in Kripke's initial exposition of the example, the hypothetical speaker has never asked herself the question, "What is the sum of 68 and 57?" In contrast, the reconstruction does not incorporate that assumption. Earlier I noted that the intrinsically temporal nature of facts of meaning apprehension and assignment does not preclude the possibility of their sharing constituents. That observation is relevant here. The reconstruction does not preclude the possibility of the very question at hand having been previously considered by the speaker. For example, suppose that yesterday S said to herself, "The answer to the question, 'What is 68 plus 57?' is 125." That event is a past fact of meaning apprehension and assignment, consisting of a mental act, MA[past, at t], together with a corresponding contextual situation, SIT[past, at t]. Suppose that today S again asks herself, "What is 68 plus 57?" The question raised in MA[past, at t] and SIT[past, at t] is now being raised in a *new* situation, SIT[present]. SIT[present] is ontologically distinct from SIT[past, at t], because its temporal index is later than t. However, despite their distinctness, there is a sense in which both situations share three constituents, namely, the question, "What is 68 plus 57?" and the two numbers, 68 and 57. It is against the background of this

conception of facts of meaning apprehension and assignment that the explication must be understood. This issue is especially relevant to the reconstruction's assertions of the possibility of "nonstandard" interpretations. To that question I shall shortly turn.

## E.  Evaluation Of The Skeptical Paradox

I pause to review the state of my discussion up to this point. Recall that the Skeptical Argument is the following:

[1] If the activity of using language is metaphysically possible then it is metaphysically possible that there exists at least one language, L, a class of speakers of L, a class of general terms of L, and a class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms.

[2] It is not metaphysically possible that there exists at least one language, L, a class of speakers of L, a class of general terms of L, and a class of facts of meaning apprehension and assignment with respect to L, those speakers, and those general terms.

[3] Hence, the activity of using language is not metaphysically possible.

I shall concede [1], at least as construed in the way outlined in Section D.5. The case for [1], sketched in Section D.7., strikes me as pretty persuasive.[92] But I do not take the same view of [2]. I think that [2] is false and that the argument for [2], as formulated in the reconstruction set out in Section D.8.c., is unsound. In particular, I shall reject line [21]:

If [20] is true, then none of the members of {f-1,...,f-n} has present normative semantical force for S.

where line [20] is:

Hence, for every member of {f-1,...,f-n}, it is possible for S to now give that member a nonstandard interpretation.

I shall concede [20], but deny [21]'s assertion that [20] entails the proposition that none of the members of {f-1,...,f-n} has present normative semantical force for S.

Of course, before rejecting a proposition, one should make sure that one understands what one proposes to reject. What is the intended meaning of [21]? [21] is a conditional. Hence, in order

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92. Note, however, as mentioned earlier, that Kripke eventually argues against premise [1] in the course of articulating Wittgenstein's "skeptical solution" to the paradox.

to evaluate its claim that its antecedent entails (in *some* sense)[93] its consequent, one must first understand the intended meanings of its antecedent and consequent. Thus, an effort to understand [21] necessarily raises two interpretive issues—the antecedent's meaning and the consequent's meaning.

More particularly, those two issues are the following. First, the antecedent of [21] is [20], which, in turn, asserts the possibility of S's now making nonstandard interpretations of each of her own past facts of meaning apprehension and assignment. Indeed, as mentioned above, [20] shares this thesis with [12], [15], [17] and [18] of the explication. How should this assertion be understood? Second, the consequent of [21] asserts that none of the members of {f-1,...,f-n} has present normative semantical force for S. How should the words, "having present normative semantical force," be construed?

I shall take up these questions in order.

### 1. The Antecedent Of [21]: What Does It Mean To Assert The Possibility Of Nonstandard Interpretations?

As just noted, [21]'s antecedent is [20], which, like [12], [15], [17] and [18], asserts the possibility of S's now making nonstandard interpretations of each of her own past facts of meaning apprehension and assignment. What does this mean?

First, note what Kripke thinks about the matter. Referring to the relevant prior mental states of the hypothetical speaker, he says, "[s]uch a state would have to be a finite object, contained in our finite minds...Can we conceive of a finite state which *could* not be interpreted in a quus-like way."[94]

As earlier remarked, the use of "finite" here should not be taken too seriously, in light of Kripke's eventual clarification.[95] Apparently, he thinks that the argument goes through, even on the assumption that the mental object in question is an "infinite object," [where, as noted earlier, that expression represents the as-

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93. There is a difficult issue I glide by here - the issue of the nature of the entailment relation. I can't go into the matter here. But suffice it to say that I reject the possible-worlds account of entailment, on the ground of its being insufficiently fine-grained. For a general discussion of the issues, see LOUX, *supra* note 38; DAVID H. SANFORD, IF P, THEN Q: CONDITIONALS AND THE FOUNDATIONS OF REASONING (1989).

94. KRIPKE, *supra* note 1, at 52; *see also* 54.

95. *Id.* at 52, n.34: "Can't the sceptic say that these directions, too, are to be interpreted in a non-standard way?"

sumption of the possibility of computing all possible cases of the addition-function].

So, what does all this come to? In *exactly* what sense does the reconstruction assert that it is possible for S to *now* make nonstandard interpretations of all her relevant past facts of meaning apprehension and assignment?

Let's begin with the term, "nonstandard interpretation." I shall assume that, in the context of Kripke's example, a nonstandard interpretation is one correlating "plus" with some function other than the addition-function, *e.g.*, the quus-function. Generalizing, I shall say that a nonstandard interpretation of a general term, G, is a semantical correlation of G with a rule differing in at least one respect from the rule semantically tied to G by the conventional semantical norms of the relevant linguistic community.

It seems that three possible interpretations can be immediately ruled out. First, the claim that it is possible for S to now give nonstandard interpretations of all her relevant past facts of meaning apprehension and assignment cannot be properly understood as the claim that, *in fact*, S made nonstandard interpretations in all past cases, but has now forgotten having done so. As noted, Kripke rules out this interpretation when he observes that the reliability of S's memory is not an issue.

Second, it might be thought that the claim that it is possible for S to now make nonstandard interpretations of each of her relevant past facts of meaning apprehension and assignment means that on each of those past occasions it *was* possible, at *those particular times*, for S to make nonstandard interpretations, instead of the standard interpretations she *did* make. That this possibility exists is trivially obvious. Surely, it was *possible* for S to have at some time in the past semantically correlated "plus" to, say, the quus-function. She *didn't*, but she *could* have. Kripke must be asserting something stronger than this.

A third interpretation which can be ruled out construes the reconstruction as asserting the possibility that in the past S simultaneously made *both* standard *and* nonstandard interpretations of each of her relevant past facts of meaning apprehension and assignment. That would be a logical impossibility.

All three of these rejected interpretations share a single feature. Each pays insufficient attention to the temporal adverbs in the reconstruction's assertions that it is possible for S to *now* give nonstandard interpretations of all of her *past* facts of meaning ap-

prehension and assignment. The discarded interpretations make the mistake of focusing upon possibilities existing in the *past*, at the times of occurrence of the relevant past facts. But the explication is not concerned with *past* interpretive possibilities. It is rather concerned with interpretive possibilities existing *now*.

With this "time-of-the-interpretive-possibility" point in mind, focus upon line [12] of the reconstruction and try to understand it on a more concrete level. Let S be a particular speaker and let G be the three-place general term, "x plus y = z." Let {f-1,...,f-n} be the (possibly infinite) set of S's past facts of meaning apprehension and assignment with respect to "x plus y = z." Let R be the "standard" semantical normative rule semantically tied to "x plus y = z" by the conventional semantical norms of the relevant linguistic community. Suppose that, in every member of {f-1,...,f-n}, S interpreted "x plus y = z" by correlating it with R. Let f-i be a member of {f-1,...,f-n} consisting of a past mental act, MA[past, at i], together with a corresponding past contextual situation, SIT[past, at i], in which S *yesterday* computed, 68 plus 57, deriving 125 as the answer. (Alternatively expressed, in f-i, S applied the term, "x plus y = z," to the ordered triple, <68, 57, 125>.) Let SIT[present] be a present situation in which S is now asked, "Does 68 plus 57 = 5?" Let R* be the normative semantical rule which agrees with the rule, R, with respect to all of S's *past* facts of meaning apprehension and assignment, but *differs* from R with respect to SIT[present] in the following way. Whereas R requires that in SIT[present] 68 plus 57 = 125, R* requires that in SIT[present] 68 plus 57 = 5. Then [12] of the reconstruction asserts that in SIT[present] it is possible for S to *now* interpret her own past fact of meaning apprehension and assignment, f-i, as one in which she semantically correlated the term, "x plus y = z," to R*, rather than to R. Presumably, applying R to the question raised in SIT[present]—"Does 68 plus 57 = 5?"—would result in the answer, "No," whereas applying R* would result in the answer, "Yes."

But what is the force of "possible for S to now interpret" here?

It seems that we can rule out yet another interpretation. Suppose that the claim were construed as asserting that it is possible *now* for S to *simply choose to begin using* "x plus y = z" in this nonstandard way. Thus interpreted, the claim is that S can *now* declare that she has *just decided* to use "plus" in such a way that 68 plus 57 is 5. Now, in contrast to the three interpretations already rejected, this one does not make the mistake of focusing exclusively upon *past* in-

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terpretive possibilities. Rather, it focuses upon a *present* interpretive possibility for S. Nonetheless, the interpretation falls short. For, the reconstruction claims that it is possible for S to *now* interpret one of her own *past* facts of meaning apprehension and assignment in a nonstandard way. In contrast, the interpretation under review has it that it is possible for S to *now choose to begin* using "plus" in a nonstandard way. Thus, the interpretation fails to tie S's *present* interpretive possibilities to her *past* facts of meaning apprehension and assignment. But it is just such a connection between the present and the past which the explication asserts. In any event, it is trivially obvious that speakers can always change their linguistic usages. Presumably, Kripke intends to assert something stronger.

What about interpreting the reconstruction as asserting that in the present situation, SIT[present], it is possible *now* for S to *just say*, "I hereby interpret my own past fact of meaning apprehension and assignment, f-i, as one in which I semantically tied "x plus y = z" to R*, instead of to R." But that seems much too easy. The possibility of S's uttering these words is obvious. Anyone can say anything, at any time, including assertions of logical impossibilities. It seems that Kripke must be maintaining something stronger than that.

But considering this interpretation may be a step in the right direction. Think again about the intuitive picture motivating Kripke's argument at this point. Imagine S's state of mind at the moment of considering whether to apply G to a present situation, SIT[present]. Suppose that she does not choose to simply begin using G in a nonstandard way, but rather intends to continue using G as she has always done in the past. Upon what can she rely in making a decision? Presumably, she has a memory, assumed to be perfect in this regard, of her own past uses of G. But what do these past uses ultimately come to in *operational* terms? It might be thought that what such past uses ultimately come to is nothing but a *set of linguistic descriptions* of cognitive acts. But it seems that the words, understood just as syntactic objects, occurring in any such description could be given a nonstandard interpretation.

For example, consider again f-i, that past fact of meaning apprehension and assignment in which S yesterday computed 68 plus 57, deriving 125 as the answer. f-i can be linguistically described as, "the act, MA[past, at i], together with its corresponding contextual situation, SIT[past, at i], in which S applied the addition-function to the arguments, 68 and 57, deriving the value, 125." Now, seman-

tically correlate the words, "the addition-function," to the quus-function, where the latter is the function agreeing with the addition-function for all S's relevant past facts of meaning apprehension and assignment, but disagreeing with respect to SIT[present], in the sense that applying the addition-function to the arguments, 68 and 57, in SIT[present] yields 125 as the answer, whereas applying the quus-function yields 5 as the answer.

Obviously, similar maneuvers are available for [15], [17], [18] and [20] of the reconstruction. The apparent generalization is that it is possible to construe the reconstruction's assertion of the possibility of S's now giving nonstandard interpretations of all her relevant past facts of meaning apprehension and assignment as asserting the possibility of S's now giving nonstandard interpretations to any particular *linguistic description* of any such past facts. I shall assume that this is the best way of interpreting the reconstruction and, thereby, the best way of understanding the skeptic's argument for premise [2] of the Skeptical Argument.

### 2. The Consequent Of [21]: What Does It Mean To Deny That Past Facts Of Meaning Apprehension And Assignment Have Present Normative Force?

[21]'s consequent is a negation—none of the members of {f-1, ...,f-n} has present normative semantical force for S." Understanding a negation requires a prior understanding of the proposition negated. So, what does it mean to assert that past facts of meaning apprehension and assignment have present normative force?

Because I have already addressed the question of its meaning in Section D.6, a brief summary should suffice. The reconstruction hypothesizes a set of past facts of meaning apprehension and assignment, {f-1,...,f-n}, in each of which S interpreted a general term, G, by correlating it with a rule, R, expressible as, "In circumstances of type, C, it is justifiable to apply G." The reconstruction goes on to posit SIT[present] as a present situation in which conditions, C, are satisfied. Then, according to the account of Section D.6, each member, f-i, of {f-1,...,f-n} has present normative semantical force for S in SIT[present] in the following sense. In virtue of f-i, S would have a reason for believing that applying G in SIT[present] would be justifiable. That is, it would be justifiable for S to believe that applying G in SIT[present] would be justifiable, because so applying it would be in accordance with the cognitive understanding of G S had in f-i. The consequent of [21] de-

nies that this holds for any member of {f-1...f-n}.

### 3. *Evaluation Of [21] As A Conditional*

I turn to the task of evaluating [21] in its own right as a conditional. [21] asserts that *if,* for every member of {f-1,...,f-n}, it is possible for S to now give that member a nonstandard interpretation *then* none of the members of {f-1,...,f-n} has present normative semantical force for S. Thus, [21] asserts that its antecedent provides a conclusive ground for its consequent.[96] [21] would be refuted by a showing that it is possible for its antecedent to be true and its consequent false. I shall try to show that.

Consider a very simple example. Suppose that "human hand" is a member of S's active vocabulary. Let {f-1,...,f-n} be the set (temporally ordered from earlier to later) of all S's past facts of meaning apprehension and assignment with respect to "human hand." Suppose that, in each member, f-i, of {f-1,...,f-n}, S correlated the term "human hand" to the semantical rule, R, expressible as, "In circumstances involving[97] at least one human hand it is justifiable to apply the term 'human hand' to the hand." Suppose that, in f-1, S explicitly formulated R to herself, but did not apply it. Suppose, further, that in f-2,...,f-n, S applied R with an awareness that R was being applied, but did not explicitly formulate it to herself on those occasions. In particular, suppose that, in each of f-2, ...,f-n, S held her left hand before her face and, while looking directly at it, asserted, "This is a human hand."

Let the present situation, SIT[present], be one in which S is holding her left hand before her face and looking directly at it. An onlooker asks S, "Are you now looking at a human hand?" Putting aside for the moment the possibility of nonstandard interpretations, it seems that, in virtue of any one of f-1,...,f-n, S has a reason for believing that applying "human hand" in SIT[present] to her left hand would be justifiable. That is, it would be justifiable for S to believe that applying "human hand" in SIT[present] to her left hand would be justifiable, because so applying it would be in accordance with the cognitive grasp of "human hand" she had in

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96. Obviously, I am invoking something stronger than the truth-functional conditional. Precisely what that stronger conditional comes to is not a matter I need go into here.

97. I do not intend to restrict "involving" to cases in which a human hand is physically present in the speaker's immediate vicinity, but I deliberately leave vague the precise boundaries of the outer limits.

each of f-1,...,f-n. Thus, S should be willing to affirmatively re-
spond to the question.

But the crucial question is whether adding the factor of the
possibility of nonstandard interpretations should change our as-
sessment. Consider the semantical rule, R*, where R* is identical
to the rule, R, except in one respect. Whereas R provides that
"human hand" is applicable to S's left hand in SIT[present], R*
provides that it is not applicable. More particularly, suppose that
SIT[present] occurs at 10:30 a.m. on March 17, 1998, in S's living
room. Then suppose that R* provides that "human hand" is appli-
cable to any human hand at any time or place, *except* any human
hand present in S's living room at 10:30 a.m. on March 17, 1998.
In the latter case, and *only* in that case, R* provides that "human
hand" applies to any giraffe which happens to be present in S's liv-
ing room at that time. Then, according to R, "human hand" *would*
be applicable in SIT[present], whereas, according to R*, it would
*not* be applicable, [assuming, of course, that there are no giraffes in
S's living room at that time].

Consider any member, f-i, of {f-1,...,f-n}. Presumably, f-i can be
linguistically described. Any adequate description of f-i would have
to include a linguistic formulation of R, *e.g.,* "In circumstances in-
volving at least one human hand, it is justifiable to apply the term
'human hand' to the hand." It is *now* possible to interpret these
words, regarded just as syntactic objects, in such a way that the
meaning of "human hand" could be explicated as, "human hand,
except at 10:30 a.m. on March 17, 1998, in S's living room, in which
case, a present giraffe." That is, it is now possible to characterize f-i
as an event in which S correlated "human hand" to R* rather than
to R.

But does this interpretive possibility make any difference?
Does the possibility of S's *now* giving nonstandard interpretations of
linguistic descriptions of her own past facts of meaning apprehen-
sion and assignment involving "human hand" compel the conclu-
sion that her *present* application of "human hand" to her own left
hand is unjustifiable? It seems not.

Put yourself in S's place. Imagine that you are now looking at
your own left hand and that you recall with perfect clarity yester-
day's experience in which you looked at that same hand and as-
serted, "This is a human hand." An onlooker asks you whether you
are now looking at a human hand. Would you believe yourself jus-
tified in answering in the negative simply because you could *now* in-

terpret the expression, "a human hand," as it occurs in the linguistic description of yesterday's experience, as equivalent to, "a human hand, except on 10:30 a.m., March 17, 1998, in my own living room, in which case, a giraffe present in my living room"?  I think not.

But if I am right, the conditional asserted in [21] is false.  The possibility of S's now giving any of her past facts of meaning apprehension and assignment a nonstandard interpretation does not entail the proposition that none of those facts has present normative semantical force for S.  However, anticipating skeptical doubts about my intuitions, I shall offer an argument for them.

Consider again any one of S's past facts of meaning apprehension and assignment involving "human hand," say, f-i.  Suppose that f-i occurred yesterday and that in f-i S, while looking directly at her left hand, asserted, "This is a human hand."  What are at least some of the items necessarily involved in f-i?

[1] There is S's left hand and one of the types it instantiates. In particular, there is the instantiable, {being a human hand}, and one of its instances, S's left hand.

[2] There is the particular mental act in which S cognitively apprehended her own left hand as an instance of the instantiable, {being a human hand}.

[a] There are at least two things here: (i) S's cognitive grasp of the instantiable, {being a human hand}, which manifests itself, at least in part, in the *capacity to recognize instances* of that instantiable and (ii) S's exercise of that capacity in the act of cognitively apprehending her left hand *as* an instance of the instantiable.

[3] There is the linguistic type, "human hand," and a token of that type uttered by S.  That is, there is the linguistic instantiable, {"human hand"} and one of its instances, the token uttered by S.[98]

[4] There is the particular mental act of S's cognitively apprehending her own utterance of a token of the linguistic instantiable, {"human hand"}, as an instance of that instantiable.

[a] As in [2], there are at least two things here: (i) S's cognitive grasp of the linguistic instantiable, {"human hand"}, which manifests itself, at least in part, in the capacity to recognize instances· of that instantiable and (ii) S's exercise of that capacity in the act of cognitively apprehending her own utterance as an in-

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98.   I gloss over the distinction between spoken and written word types and tokens because I don't think it necessary to make anything of it in this context.

stance of the instantiable.

[5] There is the instantiable, {being an entity of which is predicable any token of the linguistic instantiable, {"human hand"}}, and one of its instances, S's left hand.

[6] There is the particular mental act in which S cognitively apprehended her own left hand as an instance of the instantiable, {being an entity of which is predicable any token of the linguistic instantiable, {"human hand"}}.

[a] Again, as in [2] and [4], there are at least two items here: (i) S's cognitive grasp of the instantiable, {being an entity of which is predicable any token of the linguistic instantiable, {"human hand"}}, which manifests itself, at least in part, in the capacity to recognize instances of that instantiable and (ii) S's exercise of that capacity in the act of cognitively apprehending her left hand as an instance of the instantiable.

The mental acts mentioned in [2], [4] and [6] occur simultaneously. Indeed, it seems that there is a sense in which they are aspects of a single mental act—an act in which S cognitively apprehended her left hand simultaneously as a human hand and as an entity of which is predicable any tokens of the linguistic instantiable, {"human hand"}.

Is there a normative element in all of this? I think that there is and that it is an inseparable component or aspect of S's cognitive act of apprehension itself. In particular, that act has intrinsic normative force in at least six respects.

First, in the act of cognitively apprehending her own left hand as an instance of the instantiable, {being a human hand}, S understands that it *is* at that very time *justifiable* to cognitively apprehend her left hand as an instance of that instantiable—that is, justifiable to apprehend her left hand *as* a human hand. There is a sense in which there are not two distinct things here—the act of judging that some x is an F, on the one hand, and the act of judging that it is justifiable at that moment to believe that the x is an F. An act of grasping something as an F *just is* an act of understanding that it is at that moment justifiable to grasp it as an F. Thus, it is mistaken to assume that the "descriptive" and "normative" modes of thought and discourse are always ontologically distinct—an assumption which is one of the least fortunate of Hume's legacies. At least in this context, the descriptive and normative modes of thought and discourse are just different ways of thinking and talking about the same phenomena—judgments of cognitive apprehension of things

*as* instances of instantiables.

Second, the act of cognitively apprehending her own left hand as a human hand necessarily involves the simultaneous judgment that it *would* be justifiable *at that very time* to cognitively apprehend anything essentially similar to her left hand as a human hand. Thus, there is a sense in which cognitively grasping an entity as an instance of an instantiable necessarily involves an awareness that the instantiable is not intrinsically confined to any single instantiation in the *present.*

Third, the act of cognitively apprehending her left hand as an instance of the instantiable, {being a human hand}, necessarily involves the simultaneous judgment that it *would* be justifiable at any time in the *future* to cognitively apprehend anything essentially similar to her left hand, including that hand itself, as a human hand.  Thus, there is a sense in which S's act of judgment necessarily has temporal normative implications for the future, as well as for the present.  This is the aspect of S's act of thought normatively tying it to S's future judgments involving "human hand."

Fourth, in the act of cognitively apprehending her left hand as an entity of which "human hand" is predicable, S simultaneously understands that it is, at that very time, justifiable to cognitively apprehend her hand as an entity of which "human hand" is predicable.

Fifth, the act of cognitively apprehending her left hand as an entity of which "human hand" is predicable necessarily involves the simultaneous judgment that it would be justifiable, at the same time, to cognitively grasp anything essentially similar to her left hand as an entity of which "human hand" is predicable.

Sixth, that same act necessarily involves the simultaneous judgment that it would be justifiable at any time in the future to cognitively apprehend anything essentially similar to her left hand, including that hand itself, as an entity of which "human hand" is predicable.  Once again, S's act of cognitive apprehension has temporal normative implications for the future, as well as for the present.

These observations can be generalized.  The capacity for recognizing instances of an instantiable, F, constitutes at least a minimal part of what it is to *have a concept of F.*[99]  Of course, this is not

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99.   Here I follow especially Price's account of concepts in H.H. PRICE, THINK-ING AND EXPERIENCE (1969).

the only thing involved in having a concept of F. At least the following should be included in any complete account: [1] beliefs about the characteristics anything would have to have in order to be an F, [2] capacities for forming and formulating such beliefs, [3] beliefs about the characteristics, the possession of which would be sufficient for something's being an F, [4] capacities for forming and formulating such beliefs, [5] beliefs about methods for identifying Fs, [6] capacities for forming and formulating such beliefs, [7] beliefs about defining the essence of Fs, [8] capacities for forming and formulating such beliefs, [9] beliefs about what things constitute paradigm instances of F, [10] capacities for forming and formulating such beliefs, [11] mental images of Fs, [12] capacities for forming such images, and so forth. But I don't need to invoke such additional items here.

An essential part of what it is to have a concept of F, in this minimal sense of being able to recognize instances of an instantiable, is the awareness that any act of identifying an entity as an instance of F necessarily involves normative implications for both the identifier's present and future. The present implications can be schematically represented by thoughts of the form, "I am presently justified in identifying this entity, and anything essentially similar to it, as an F." The implications for the future can be represented by thoughts of the form, "I would be justified in the future in identifying anything essentially similar to this as an F." Thus, there is a sense in which having a concept of F is an intrinsically normative capacity. Exercises of concepts *just are* normative. The very act of apprehending instantiables as instantiables necessarily gives rise to an immediate sense of the normative.

However, it is important to avoid hearing this claim with Kantian ears, that is, hearing it as suggesting that we somehow impose our concepts upon an ultimately unknowable world of things-in-themselves. Concepts are intrinsically relational. The phenomenon of having a concept of F could not occur by itself. Having a concept of F is a relation tying persons ("*Who* has the concept of F?") with instantiables ("*What* is the instantiable, F, of which the concept is a concept?"). Thus, concepts are necessarily tied to instantiables and instantiables, in turn, are constituents of mind-independent reality. In the absence of mind-independent recurrences of mind-independent instantiables, there could be no concepts. For, concepts just are the cognitive apprehension of mind-

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independent recurrences *as* recurrences.[100] This doesn't mean that human concepts necessarily always "get instantiables right." There is the ever-present possibility of error, *e.g.*, the possibility that one's beliefs about an instantiable fail to do it justice. But it does mean that concepts are essentially directed to instantiables and that concepts are intrinsically normative in the sense that the very act of grasping something as an F necessarily involves a cognitive grasp of normative implications for both the present and the future.

Given this minimal understanding of what it is to have a concept, it is possible to tie concepts to rules. *Having a concept* can be identified with *following a rule.* That is, the activity of following rules can be understood as constituted by the capacity of recognizing entities as instances of instantiables. Thus, the capacity of identifying things as Fs, Gs, or Hs can be understood as the capacity to follow rules expressible in the form, "It is justifiable to classify things essentially similar to *this thing* as instances of..." Hence, just as the condition of having concepts is an essentially normative condition, so is the condition of following rules. For, having a concept of F just is the capacity of following a rule for identifying Fs. Similarly, learning a concept of F just is learning a rule for identifying Fs.[101]

These general ideas apply directly to the concern of this essay. Consider again f-i, in which S, while looking at her own left hand, asserted, "This is a human hand." There she exercised both her concept of the instantiable, {being a human hand}, and her concept of the instantiable, {being a thing of which is predicable any token of the linguistic instantiable, {"human hand"}}. She exercised those concepts in the act of judging that her left hand is a human hand and in the act of judging that "human hand" is predicable of

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100. Although this is not the place for an exposition of the theory of meaning I presuppose here, perhaps a word of clarification would help. In my view, linguistic meaning is ultimately a function of mind-independent instantiables, where those instantiables, in turn, are directly or indirectly identifiable by direct reference to paradigm instances. Thus, although I think that any adequate theory of meaning must include an account of concepts, I do not interpret concepts in a "conventionalist" way, where "conventionalist" refers to theories of meaning which make human concepts the ultimate semantical referents of linguistic acts. For an illuminating critical discussion of conventionalist theories of meaning in this sense, *see* MICHAEL S. MOORE, *Law as a Functional Kind, in* NATURAL LAW THEORY 188, 204-06 (Robert P. George ed., 1992).

101. The understanding of "rule" I presuppose here is the one articulated by Neil MacCormick: "Rules are hypothetical normative propositions stipulating that if certain conditions...obtain, then certain consequences are to (or 'must' or 'ought to') follow or be implemented." NEIL MACMORMICK, LEGAL REASONING AND LEGAL THEORY x (1978).

her left hand. In so judging she was necessarily aware of the temporal normative implications for the present and future—implications of the form, "It is now and would be in the future, justifiable for me to identify anything essentially similar to this *both* as a human hand *and* as a thing of which 'human hand' is predicable."

In light of the possibility of identifying concepts and rules, we can understand S's concept of the instantiable, {being a human hand}, and her concept of the linguistic instantiable, {"human hand"}, as together constituting her capacity of following rule, R, where R is expressible as, "In circumstances involving a human hand, it is justifiable to apply the term 'human hand' to the hand." Hence, R can be understood as itself incorporating two more basic rules. One of them is presupposed in R's antecedent condition of application—"In circumstances involving a human hand..." Applying R requires both having and exercising the capacity to determine whether R's condition of application is satisfied. In turn, a necessary condition for that capacity is both having and exercising a concept of the instantiable, {being a human hand}. The second rule is tied to the words, "justifiable to apply the term 'human hand' to the hand." A necessary condition for applying that directive is both having and exercising the concept of the linguistic instantiable, {"human hand"}.

Now, let's add the factor of the possibility of nonstandard interpretations. Suppose again that S finds herself in the present moment, SIT[present], looking at her left hand. An onlooker asks S whether she is now looking at a human hand. S answers affirmatively. For, she has a perfect recollection of all her past facts of meaning apprehension and assignment with respect to "human hand." [Recall Kripke's remark that the fallibility of memory is not in issue.] Thus, she recalls with perfect clarity: (i) her past cognitive apprehension of the instantiable, {being a human hand}, (ii) her past cognitive apprehension of the instantiable, {being a thing of which is predicable any token of the linguistic instantiable, {'human hand'}} and (iii) her past cognitive apprehension of the fact that it would be justifiable, at any time in the future, to cognitively apprehend anything essentially similar to her left hand as a human hand and as a thing of which is predicable any token of the linguistic instantiable, {"human hand"}. Given these perfect recollections, she now sees that the very same instantiables are once again instantiated. So, she reasonably believes herself justified in

predicating "human hand" of her left hand.

But suppose that the onlooker raises the possibility of giving each of S's past facts of meaning apprehension and assignment a nonstandard interpretation. "Isn't it possible to reinterpret the phrase, "human hand," as it occurs in each of the linguistic descriptions of your own past facts of meaning apprehension and assignment, as equivalent to, "a human hand, except at 10:30 a.m. on March 17, 1998, in your own living room, in which case, a present giraffe'?" How should S reply? It seems to me that she should say something like the following.

Of course, it is *now* possible to "reinterpret," in the skeptic's sense, the phrase, "human hand," in the suggested way. But that possibility has no bearing upon the question whether it is *now justifiable* for S to use the phrase, "human hand," in the *very same way* in which she has been using it. For, what S has before her mind at the present moment is not just a *syntactic type*, ("human hand").[102] *Of course*, one can always tie any given syntactic type to any given meaning one chooses. Rather, what S has before her mind are her present recollections of the relevant facts themselves—her past facts of meaning apprehension and assignment with respect to "human hand." What does that recollection come to? [For simplicity, I confine my discussion to her past applications of "human hand" to particular entities, in this case, her own left hand.] In that regard, she can recall at least the following:

[1] S recalls that she has been using the linguistic instantiable, {"human hand"}, in a way which presupposes a semantical tie between that instantiable and the nonlinguistic instantiable, {being a human hand}. That is to say, S has been predicating tokens of the linguistic type, "human hand," to entities when and only when she believed that those entities were, in fact, human hands.

[2] S recalls that each of her past applications of "human hand" essentially involved the intuitive judgments: (i) "I am now justified in judging that this is a human hand" and (ii) "I would be justified in the future in judging that anything essentially similar to this is also a human hand."

[3] Finally, S has in mind her present perception of what appears to be a human hand—her own left hand. As in her past facts of meaning apprehension and assignment, she cognitively appre-

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102. Note that Kripke's skeptic must necessarily presuppose the capacity of speakers to retain in their memories conscious awareness of syntactic instantiables. I'll return to this general theme of what the skeptic must presuppose later.

hends her hand as a human hand and simultaneously judges that she is now justified in so apprehending it and would be justified in so apprehending anything essentially similar to it both in the present and in the future.

The skeptic's raising the possibility of giving a nonstandard interpretation of the syntactic type, "human hand," as it figures in each linguistic description of S's past uses of "human hand," is irrelevant. For, the skeptic is raising the possibility of semantically tying the linguistic instantiable, {"human hand"}, to a *different* nonlinguistic instantiable. Thus, S should simply reply: "If I *had* chosen to semantically tie "human hand" to the nonlinguistic instantiable, {being a human hand, except at 10:30 a.m. on March 17, 1998, in my own living room, in which case, a present giraffe}, then, of course, you would be correct in asserting that I ought to deny that "human hand" is applicable to my left hand. But that is a *counterfactual* statement. In fact, I did *not* semantically tie "human hand" to your suggested nonlinguistic instantiable. I could *say* that I did, but that wouldn't make it so. Rather, I tied it to the instantiable, {being a human hand}. I can now just *see* that my left hand is an instance of that instantiable and hence that I am now justified in saying so."

It seems that the fundamental inference pattern S invokes here is the following:

[1] I have reason to believe that x is essentially similar to entities of which I have predicated "F" in the past.

[2] I have reason to believe that in those past cases I was justified in predicating "F" of those entities and that I would have been justified in predicating "F" of any entities essentially similar to them, whether in that present or in the future.

[3] The present moment is one of those formerly "future" moments.

[4] I haven't changed my pattern of usage of "F" in the interim.

[5] Hence, I have reason to believe that I am now justified in predicating "F" of x.

It might be asked why S needs to invoke any inference pattern at all. Why not simply rely upon the immediate intuition that x is an F? This raises a difficult issue into which I shall not delve except to make two brief observations. First, it is the skeptic who has raised a doubt about the connection between S's past and present experience. Thus, in order to relevantly respond, S must address

that connection herself. Second, it seems that any cognitive judgment of the form, "I have reason to believe that x is an F," necessarily relies upon present recollections of past experience, for example, recollections of past experiences of apprehending the instantiables invoked in the present judgment.[103] Therefore, any complete epistemological justification of such a judgment must appeal to such recollections of past experience.

This pattern of inference seems constitutive of the human essence itself. That is, being human necessarily involves both a capacity and a willingness to use the pattern. Does the skeptic's challenge constitute a sufficient reason for rejecting it?

It seems not. For, the inference pattern cannot be intelligibly rejected. Consider what would have to be the skeptic's thought process at the very moment of his attack:

[1]S's assertion that her present judgment is justifiable is essentially similar to entities of which I have predicated "philosophically unjustifiable" in the past.

[2]I have reason to believe that in those past cases I was justified in predicating "philosophically unjustifiable" of those entities and that I would have been justified in predicating "philosophically unjustifiable" of any entities essentially similar to them, whether in that present or in the then future.

[3]The present moment is one of those formerly "future" moments.

[4]I haven't changed my pattern of usage of "philosophically unjustifiable" in the interim.

[5]Hence, I have reason to believe that I am now justified in predicating "philosophically unjustifiable" of S's assertion.

Hence, the skeptic must necessarily invoke the very same inference pattern in order to even formulate his argument. And that's not surprising. For, *any* assertion must invoke *some* instantiables—in this particular case, the instantiable, {being a philosophically unjustifiable assertion}.

This necessity of having to invoke at least one instantiable, with the attendant implications concerning the normativity of cognitive apprehension, plagues the skeptic's case in at least one other respect.

Consider again the skeptic's suggestion of re-interpreting the

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103.    I rely here upon a form of Russell's Principle of Acquaintance. BERTRAND RUSSELL, THE PROBLEMS OF PHILOSOPHY 46-59 (1997).

phrase, "human hand," as it occurs in the linguistic descriptions of S's past facts of meaning apprehension and assignment, as, "a human hand, except at 10:30 a.m. on March 17, 1998, in S's living room, in which case, a present giraffe." What this suggestion essentially comes to is the claim that each linguistic description of S's past facts of meaning apprehension and assignment can be correlated with rule, R*, rather than with rule, R. The skeptic goes on to claim that, if R* were applied to SIT[present], S would be obliged to conclude that there was no human hand present. For, R* provides that "human hand" is applicable in SIT[present] only if there is a giraffe present, and there is none. But note what the skeptic must necessarily presuppose in making this point. In arguing that a present application of R* would dictate a negative response to the question, "Are you now looking at a human hand?" the skeptic must presuppose that the expressions, "10:30 a.m. on March 17, 1998," "S's living room" and "a present giraffe," are *themselves* tied to non-linguistic instantiables, (*e.g.,* {being a giraffe}), and that, therefore, any judgment of cognitive apprehension involving those instantiables must necessarily involve the very same semantical normative force which the skeptic alleges cannot exist for S.

More concretely, in order to determine what R* dictates for SIT[present], one must, among other things, answer the questions, "Is it justifiable to assert that there is a giraffe in S's living room right now?" The skeptic must presumably answer, "No, it would not be justifiable. For, although it *is* justifiable to assert that this is S's living room and that it is now 10:30 a.m. on March 17, 1998, it is *not* justifiable to assert that there is a giraffe in that living room right now." But that response concedes the very point at issue—whether past facts of meaning apprehension and assignment have present normative force. The skeptic's response necessarily concedes that they do. No one, not even Kripke's skeptic, can avoid invoking and presupposing the intrinsic normativity inherent in *any* judgment of the form, "x is an F."

Thus, in the spirit of the maxim, "Imitation is the sincerest form of flattery," I conclude that the conditional asserted in [21] is false. It fails to do justice to the phenomenological data of the human condition, data which even skeptics cannot deny without self-contradiction.

## F. Implications For D'Amato's Argument

Recall my reconstruction of D'Amato's overall argument for

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the radical indeterminacy thesis:

[1] Either formalism is true or the radical indeterminacy thesis is true. {Premise}

[2] If formalism is true then the FFP is true. {Premise}

[3] The FFP is not true. {Premise}

[4] Formalism is not true. {2,3}

[5] The radical indeterminacy thesis is true. {1,4}

I have called this *D'Amato's Radical Indeterminacy Argument.* The argument is deductively valid. Hence, the only remaining question concerns the truth-values of the premises. As indicated earlier, I concede [1] and [2], at least assuming the modification of the FFP I proposed in Section C.3—the proposition that at least some general terms in any natural language have paradigm instances. [3] is the controversial premise.

I have argued that one of the six arguments D'Amato offers in support of [3] is:

[1] If, for an arbitrarily selected general term, G, no amount of past usage of G can normatively justify any particular present application of G then the FFP is false. {Premise}

[2] For an arbitrarily selected general term, G, no amount of past usage of G can normatively justify any particular present application of G. {Premise}

[3] The FFP is false. {1,2}

I have called this *D'Amato's Second Supporting Argument.* The argument is deductively valid. Thus, again, the only question is the truth-values of the premises. As indicated earlier, I concede [1]. What about [2]? D'Amato maintains that Kripke's argument for the Skeptical Conclusion supports [2]. But what particular aspect of Kripke's argument does D'Amato have in mind? I suggest that he should be understood as relying upon proposition [22] of my reconstruction of Kripke's argument for the Skeptical Conclusion: "Hence, none of the members of {f-1,...,f-n} has present normative force for S." Thus, the case for premise [2] of D'Amato's second supporting argument can be schematically formulated as: "{i} If proposition [22] of Kripke's argument is true, then premise [2] of D'Amato's Second Supporting Argument is true. {ii} [22] is true."

Is the conditional [{i}] plausible? That is, does its antecedent support its consequent? I think so. Recall that Kripke's argument invokes an arbitrarily selected language, speaker, general term, and facts of meaning apprehension and assignment. Hence, the argument can presumably be generalized to *all* languages, speakers,

general terms, and facts of meaning apprehension and assignment for those terms. Thus, for *any* language, speaker, general term, and facts of meaning apprehension and assignment for that term, {f-1,...,f-n}, *none* of the members of {f-1,...,f-n} has present normative force for that speaker. This proposition seems to entail premise [2] of D'Amato's Second Supporting Argument. Indeed, it seems essentially equivalent to it. That is, it seems to be just an alternative way of expressing the claim that, for an arbitrarily selected general term, G, no amount of past usage of G can normatively justify any particular present application of G.

Thus, the conditional [{i}] seems true. But what about the truth-value of the antecedent? After all, even if a conditional is true, it can't be used to establish the truth of its consequent unless its antecedent is shown to be true. So, is the antecedent in our case, namely, proposition [22] of Kripke's derivation, true? Recall that [22] purports to follow from [20] and [21]. [20] is the proposition, "For every member of {f-1,...,f-n} it is possible for S to now give that member a nonstandard interpretation." [21] is the proposition, "If [20] is true, then none of the members of {f-1,...,f-n} has present normative semantical force for S." In Section E, I conceded the truth of [20], but argued that [21] is false. But if [21] is false, then [22] can't be established in its own right on the basis of [20] and [21]. It might help to think about this in terms of the general form of the move from [20] and [21] to [22]. That general form is, "P [i.e., [20]]. If P then Q [i.e., If [20] and [21] then [22]]. Hence, Q [i.e., [22]]." In effect, I have tried to show that the intervening conditional, "If P then Q," is false. But if so, then Q has not been established.

Thus, if I am right about [21] being false, then [22] has not been established, and, in turn, if [22] has not been established, then neither has premise [2] of D'Amato's Second Supporting Argument.

But if premise [2] of D'Amato's Second Supporting Argument has not been established, then neither has premise [3] of D'Amato's Radical Indeterminacy Argument, at least insofar as [3] relies upon Kripke's argument.

A logical diagram of the situation may help.

    *D'Amato's Radical Indeterminacy Argument*
    [1]
    [2]
    - - - - - ->[3]

- [4]
- [5]
- *D'Amato's Second Supporting Argument*
- [1]
- [2] <- - - - - - -
- [3]-
  *Kripke's Argument*-
  [1]-
  ...-
  [22] - - - - - - -
  ...
  [25]

Summarizing, if proposition [22] of Kripke's argument is false, then [2] of D'Amato's Second Supporting Argument hasn't been established. If [2] hasn't been established, then neither has [3] of that same argument. If [3] hasn't been established, then [3] of D'Amato's Radical Indeterminacy Argument hasn't been established. If [3] hasn't been established, then neither has [5] of the same argument. But [5] is the radical indeterminacy thesis itself. Hence, the indeterminacy thesis has not been established by the appeal to Kripke's argument.

## II. CONCLUSION

I have argued that D'Amato's appeal to Kripke's Skeptical Argument fails to establish the radical indeterminacy thesis. However, it should be noted that I have dealt with only one of six arguments D'Amato offers in support of premise [3] of his Radical Indeterminacy Argument. It remains to be seen how the others would fare under systematic scrutiny.[104]

Of course, the primary focus of this paper has been negative. I have tried to show that the radical indeterminacy thesis cannot be supported by an appeal to Kripke's Skeptical Argument. I haven't had occasion to affirmatively formulate a theory of law. I hope to

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104. I intend to take up D'Amato's appeal to the Skolem-Lowenheim Theorem [in his third supporting argument] in a subsequent paper. In addition, I want to examine his interesting claim that legal outcomes can be made determinate by invoking moral intuitions, and that the latter are not susceptible to Kripke's skeptical paradox because they are essentially nonlinguistic. (See in this regard, D'AMATO, *supra* note 2, at 170, nn.67 & 68, 185 n.128.). In that regard, I would pursue the question whether my appeal to the normative element inhering in any application of general terms goes at least some way in the direction of reconciling the approach of this paper with D'Amato's position.

later take steps in that direction. Those steps would include an articulation of a considerable measure of agreement with certain aspects of D'Amato's analysis. I cannot accept his ultimate conclusion—radical indeterminacy—but I also think that many of the things he argues for on the way to that conclusion are true, important, and perhaps insufficiently acknowledged by many.