Sophisms and Contempt for Autonomy

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Abstract: Argumentation theory tends to treat the distinction between intentional and unintentional fallacies - sophism and paralogisms - as unimportant for the evaluation of argumentation. I suspect that this is so because fallacious arguments pose the same threat to the production of epistemic goods whether they are intentional or not, so the distinction is not needed for the epistemic evaluation of argumentation. In this paper, I argue that argumentation has a special connection to respect for autonomy, one which enables it to also produce distinctly moral goods. Sophisms, but not paralogisms, spoil these goods. Worse; sophisms produce potentially continuing moral harms while paralogisms do not. Therefore, the paralogism/sophism distinction should be re-integrated into argumentation theory's evaluative toolbox.

Keywords: fallacy, sophism/paralogism, ethics of argumentation, autonomy

1. Introduction

Fallacies are arguments that seem to present good reasons, but do not. An arguer may use a fallacy intentionally or culpably negligently, deceiving an audience or interlocutor.[1] Or they may use it unintentionally, making an innocent mistake in reasoning. Traditionally, an intentionally used fallacy has been called a sophism and an unintentionally used fallacy has been called a paralogism (compare Aberdein 2016).

In general, we base much of our evaluations of and reactions to each other's behavior on our assessments of whether we are dealing with deliberate action or innocent mistake. So it seems intuitive to think that the distinction between sophism and paralogism plays an important role in

the evaluation of argumentation. However, modern fallacy theory rarely pays any attention to it. In fact, one of the central figures in fallacy theory, Douglas Walton, thought so little of the distinction that he attempted to redefine the terms "sophism" and "paralogism" so that intention would no longer play a role (Walton 1995). And in general, normative argumentation theory seems committed to the project of developing norms for the evaluation of argumentation that do not require any reference to arguers' intentions, motives, beliefs etc. Much of the field appears to have accepted Pragma-Dialectics requirement of "externalisation" for any normative theory of argumentation, which demands that analysts/evaluators need not engage in any speculation about arguers' inner states in order to evaluate argumentation (van Eemeren 2018).

In this paper, I argue that fallacy theory ought to rehabilitate the intent-based distinction between paralogism and sophism for the evaluation of argumentation. In fact, I believe that the entire project of excluding reference to inner states from normative argumentation theory is a mistake, one that is especially costly when it comes to the intent-based sophism/paralogism distinction. I argue that this cost is obscured by argumentation theory's narrow focus on good argumentation as a way to establish the *epistemic* legitimacy of accepting (or rejecting) claims, decisions, judgements, points of view, compromises etc. (from now on, I will somewhat clumsily sum up all these under the term "claim"). The intent-based sophism/paralogism distinction is not necessary to evaluate argumentation in this respect, and so it has fallen by the wayside. However, I will show that argumentation can also provide a different kind of legitimacy for accepting (or rejecting) claims. This legitimacy is based on argumentation's special ability to express and appeal to respect for *autonomy*, understood here as the ability and right to reasoned self-governance (e.g. Spector 2022). Argumentation's relationship to autonomy can generate what I will here refer to as *moral* legitimacy for accepting (or rejecting) claims. Depending on context, producing this kind

of autonomy-based moral legitimacy can be equally as valuable as, sometimes even more valuable than, establishing epistemic legitimacy. And in order to evaluate argumentation's ability to produce this kind of legitimacy, the intent-based sophism/paralogism distinction is central. It therefore ought to be acknowledged as an important aspect of the evaluation of argumentation.

2. There Is No Need for Intent in the Epistemic Evaluation of Argumentation

Fallacy theory, an expansive sub-field of argumentation theory, is dedicated to the identification and analysis of the many ways in which argumentation can go wrong. It has produced sophisticated accounts of a vast variety of argument types, their legitimate and illegitimate uses and their effects on audiences in different contexts. So, if I am correct that the neglect of the intent-based sophism/paralogism distinction is a mistake, then why has the field been able to grow so large and develop so far without it?

I think the answer lies in identifying the goal towards which most modern normative argumentation theory, including modern fallacy theory, is oriented. It is (I agree) one of the most valuable goods that we can accomplish through argumentation, namely the determination of whether accepting (or rejecting) a claim is epistemically legitimate. Through argumentation we can determine the reasons we have for and against claims and balance their weights against each other. We can thereby determine whether accepting them is warranted, generating epistemic goods like knowledge, insight, understanding, etc. Many believe that these goods are of intrinsic value. But even those who do not can see their immense instrumental value for action-guidance. It is no wonder, then, that most modern normative argumentation theories build their argumentative norms around the goal of determining epistemic legitimacy (Aberdein 2010; Bermejo Luque 2011; Goldman 2004; Siegel & Biro 1997). Even theories that identify other goals for good argumentation, such as persuasion or disagreement-management, treat their accomplishment as

valuable only if they are achieved via the determination of epistemic legitimacy (Johnson 2000; van Eemeren 2018) .

Fallacies, that is, arguments that reliably appear better than they are, pose a danger to accomplishing the goal of determining epistemic legitimacy. They do this because they undermine the ways in which argumentation can help us identify and balance reasons. If we realize that an argument that persuaded us may have been fallacious, then we can no longer trust that we have been persuaded based on good reasons, and we can no longer rely on our perception of how weighty those reasons were. If we realize that a fallacy was used during an argumentative exchange, then we can no longer use the fact that our arguing yielded a result as a reason for accepting that result as epistemically legitimate (at least not until we have determined how far reaching the effects of the fallacious argument were). And it is even worse if fallacies are used during argumentation and we *do not* realize this. Then we may accept claims even though this is not epistemically legitimate, and potentially act on this acceptance.

It is no wonder then that within a normative argumentation theory centered around the goal of determining epistemic legitimacy, fallacy theory is such an important sub-field. But that fallacies pose this kind of danger to the goal of establishing epistemic legitimacy does *not* provide a reason for paying attention to the intent-based sophism/paralogism distinction. After all, fallacies pose the *same* danger whether they are used intentionally or not. A fallacious argument fails at presenting reasons correctly, but this failure is not worse because the arguer intentionally chose to use it. So, a fallacy theory built around epistemic legitimacy need not include the intent-based sophism/paralogism distinction.

In fact, and rather ironically, from the perspective of someone dedicated *only* to this goal, we might get the idea that using a sophism is *less* bad than using a paralogism: Imagine two people

arguing with each other. Let's say in scenario A, one of them uses a fallacy *unintentionally*, and their argument results in both of them being persuaded that accepting some claim is epistemically legitimate when really it is not. But in scenario B, one of them uses a fallacy *intentionally*, and so their argument results in just *one of them* being persuaded that this claim is epistemically legitimate, while the other knows full well that no epistemic legitimacy was established. Arguably, in scenario A, we have a worse overall track record with respect to the arguers' success in determining epistemic legitimacy than in scenario B.

3. Argumentation, Autonomy and Moral Legitimacy

I expect that this last argument struck you as ridiculous: Sophisms are *obviously* worse than paralogisms, not the other way around. I agree. And I expect that we also agree on why sophisms are worse than paralogisms: Because *using* sophisms is *deceptive* and using paralogisms is not. But it is important to note that with that thought, we have stopped evaluating argumentation only according to its usefulness for determining epistemic legitimacy. Instead, we are now engaging in the *moral* evaluation of the behavior of arguers. What we mean by "worse" has changed. The reason why we think of sophisms as worse than paralogisms is very similar to the reason why we think of a lie as worse than an untruth told innocently; not because the lie is worse *epistemically* speaking,[2] but because lying is deceptive and therefore worse *morally* speaking. To say that a false claim was a lie is to import an additional, moral element of evaluation. Similarly, to say that a fallacy was a sophism is to import a moral element into the evaluation of argumentation.

The question, then, becomes whether normative argumentation theory should concern itself with the *moral* evaluation of argumentation, rather than leaving that to the ethicists. I think the answer is yes. But not because that enhances our understanding of how and when arguing can help us determine the epistemic legitimacy of accepting (or rejecting) claims. Instead, it allows us to

evaluate argumentation with respect to whether it aids or damages our ability to generate another, equally important kind of legitimacy for accepting (or rejecting) claims: moral legitimacy.

In order to explain what I mean when I say that arguing can generate a *moral* legitimacy for the acceptance (or rejection) of claims, I first have to say something about what it means to engage in argumentation and how this relates to the value of autonomy, and to respect for autonomy. Contrary to a popular shorthand definition, the unique attribute of argumentation is not that it is the *giving* or *exchanging* of reasons – at least not if by "reasons" we mean minimally good reasons. Argumentation certainly involves attempts at creating the *perception* of reasons. That is what makes sophisms similar to lies: A liar presents (what they take to be) a false claim as true, thereby attempting to mislead their victim into accepting or believing something false. And an arguer using a sophism presents (what they take to be) a non-/weak reason as a (strong) reason, thereby attempting to mislead their victim into accepting or believing something false (or judging erroneously etc.). So argumentation has *something* to do with giving or exchanging reasons, namely that it always involves at least the *pretense* of an attempt to give (or exchange) reasons (compare Casey 2020). But this is not what makes argumentation unique. After all, explaining involves giving reasons, and so does (some) testifying. So we constantly give and exchange reasons without thereby engaging in argumentation (compare Bermejo-Luque 2015). And neither does argumentation *always* involve giving or exchanging reasons. Some arguments are so bad, they do not give any reason at all, yet people use them in argumentation. For example, there was a time and place where the fact that women have a uterus was regularly offered as the main premise of an argument that they should not engage in difficult cognitive work. That argument certainly persuaded some people, but it never managed to give anyone even the weakest reason (Clarke 1873).

Rather, the unique attribute of argumentation is that it always involves an implicit inference claim, that is, that it *presents* something as a reason for a claim (Godden 2021; Hitchcock 2007). This means that arguing involves more than the attempt of making someone perceive that there is a reason for a claim, thereby influencing their beliefs and/or commitments (compare Casey 2020). It also involves drawing their attention to the fact that the arguer is trying to make them perceive a reason, which will influence their beliefs and/or commitments. In this, according to Govier (1999), lies argumentation's unique *honesty:* it wears what it attempts to do on its sleeve.

This is the key to understanding how argumentation connects to respect for autonomy, and therefore how arguing can produce *moral* legitimacy for accepting or rejecting a claim. For the effect of this "honesty" is that argumentation provides the addressee with a prompt for reasoned engagement: Argumentation announces itself, and part of knowing what argumentation is involves knowing that it can fail. So, a person who argues not only attempts to create the perception of a reason, she does so in a way that invites her addressee to critically evaluate whether she succeeded. And she does so even though she could choose to do otherwise. Arguers have other options – they could give reasons without making such an invitation. They can even engage in what Govier calls "packing strategies," ways of communicating that are effective at *lowering* the likelihood of reasoned engagement (Govier 1999). Choosing argumentation instead means *choosing* to invite the addressee into reasoned engagement. This invitation already exists when arguers just present arguments to an audience, but it is even more pronounced when they initiate an argumentative exchange. This is because such an exchange involves a mutual engagement with each other's contributions. So, an arguer who initiates an argumentative exchange is not only inviting their addressee to reasonably engage with their arguments, but also to submit their own arguments to the reasoned engagement of the arguer (and to potentially argue about these engagements in turn).

Argumentation theorists like Govier (1999) (and deliberative democrats, see, e.g. Gutmann and Thompson (2004)) have pointed out that because of this, argumentation communicates the arguer's respect for the interlocutor's standing as an autonomous being: According to the rights-conception of personal autonomy, any person with the basic ability of making reasoned decisions about their own life (including what they will accept as true) has a *pro tanto* right to not be treated in a way that aims at interfering with their reasoned self-governance (e.g. Spector 2022). The choice to argue instead of using some other means of communicating reasons signals respect for this right. This is so because the arguer openly chooses a means of influencing their audience's mind that alerts the audience to the need to take initiative and participate in determining whether and in what shape this influence will take place. And initiating an argumentative exchange signals even more respect: By opening themselves up to their interlocutor's arguments, arguers communicate that they are willing to have their own mind influenced in turn, treating their interlocutor's ability to reason as a source of potential improvement of their *own* self-governance.

But this is not the only way in which argumentation relates to respect for autonomy; it also appeals to the interlocutor's *self-respect* as a reasonable and therefore autonomous being. This is the other effect of argumentation's "honesty": By attempting to create mutual awareness that the addressee has been presented with what the arguer (purportedly) considers a reason, argumentation makes a *normative claim* on the addressee. After all, reasons are normative in that, as autonomous beings, we *should* modify our commitments in accordance with them. The addressee *should* adjust epistemically in whatever way they determine is warranted by the presented reasons. And they should do this (also) out of respect *for their own* status as an autonomous being who self-governs according to reasons (compare Godden 2020).

This twofold way in which argumentation connects to respect for autonomy is the reason why it can generate more than just the potential recognition of the *epistemic* legitimacy for accepting (or rejecting) a claim. This is most obvious when it comes to argumentative exchanges. When people argue in good faith, and actually pay the respect to autonomy that argumentation communicates, then they create a complex construction of respect for self and other that connects to the argument's outcome. This outcome is then meaningfully *in common* to all involved, and accepting and acting on it becomes an ongoing expression of the respect for autonomy that animated the argumentative exchange. That is why argumentation can generate *moral* legitimacy for the acceptance or rejection of claims: It is not *my* claim that I am accepting/acting on but *our* claim, attributable to us in our role as autonomous, because reasonable, beings.

To a lesser extent, just presenting arguments can also generate moral legitimacy by demonstrating respect through a commitment to making a claim *in common* – even if the arguer does not open it up to an argumentative exchange. For example, legal theorists argue that judges should provide reasoned case-opinions not only to allow the parties to understand the decision, or to provide a basis for precedent. They should also do so because it demonstrates the judge's respect for the parties as reasonable beings over whom they may only exert power justified by the kinds of (legal) reasons that the parties, as autonomous people, themselves *also* ought to accept (Waldron 2012).

Importantly, this moral legitimacy can justify accepting a claim and acting on the acceptance even in the face of ongoing epistemic insecurity. For example, arguers may be justified in making difficult decisions in accordance with an argued outcome even if they have not fully overcome their epistemic insecurity, simply because this decision now reflects their mutual respect for each other's right to autonomously self-govern.[3] We ought not underestimate the importance

of this. As valuable as the determination of epistemic legitimacy is, the moral legitimacy that argumentation can generate provides a good reason for engaging in argumentation in many contexts, even when it is unlikely that epistemic gains will be made, or are worth the resources that arguing requires. Deliberative democrats cite it as a reason for preferring a deliberation-based democratic procedure to one that depends wholly on majority voting (Gutmann & Thompson 2004). And, for what its worth, I often submit proposals to discussion in a group (e.g., in a department meeting) even when everyone already knows who approves and disapproves and for what reasons, so the epistemic payout is likely negligible. I do not do so *merely* pro forma. Rather, the short discussion that follows, while it may not generate any new *epistemic* insights, *morally* legitimates the acceptance or rejection of the proposal and the associated actions.

4. Moral Legitimacy and the Sophism/Paralogism Distinction

So, argumentation can generate *moral* legitimacy for accepting or rejecting a claim because of its ability to integrate an expression of respect for autonomy into the (purported, attempted) giving/exchanging of reasons. What does this have to do with the intent-based sophism/paralogism distinction?

At this point, we need to pay close attention to *the exact* relationship between argumentation and autonomy. Govier (1999) claims that argumentation is inherently "honest" because it draws attention to its attempt at making the addressee perceive a reason. Because of that, I maintained, arguing always involves *communicating* and *appealing to* respect for autonomy. But this "honesty" can become a disguise for deception when the respect is not actually *paid*. Most obviously, argumentation that uses sophisms fails to pay the respect for autonomy that it communicates since it is aimed at interfering with the addressee's ability to self-govern by falsifying their view of how the world is. Because of this, it does not generate moral legitimacy.

But this failure is not due solely to the nature of sophisms as fallacies. The use of paralogisms does not spoil the creation of moral legitimacy in the same way. Intent is important here. All fallacies undermine argumentation's ability to determine the epistemic legitimacy of accepting or rejecting a claim and thereby interfere with autonomous self-governance. But if the fallacy is a paralogism, this interference is not intentional and therefore does not constitute a failure to be respectful of the right to autonomous self-governance. And it is the expressed respect that allows argumentation to generate moral legitimacy. Accepting and/or acting on a claim reached through argumentation that involved paralogisms still continuously expresses respect – that is exactly why argumentation can justify acceptance and/or action even in the face of ongoing epistemic insecurity.[4] Only *intentional* fallacies – sophisms – are disrespectful and therefore undermine argumentation ability to produce moral legitimacy.

This, I think, justifies why fallacy theory ought to rehabilitate the intent-based sophism/paralogism distinction. While the moral evaluation of argumentation may not be important for establishing its success when it comes to the determination of *epistemic* legitimacy, it is vitally important for establishing its success in the generation of *moral* legitimacy for accepting or rejecting claims.

5. Sophism and Contempt for Autonomy

I could conclude here. I have shown that using sophisms is *bad* arguing in a way that is relevantly different from using paralogisms because sophisms, but not paralogisms, spoil the realization of an important argumentative goal. Therefore, normative argumentation theory should re-integrate the intent-based sophism/paralogism distinction into its evaluative toolbox.

However, I do not think that what I have said so far fully captures the extend to which using sophisms is bad arguing – how serious the wrong is that an arguer who uses a sophism commits.

So far, I have talked about the deceit involved in using a sophism as similar to the deceit involved in lying. And the moral seriousness of lying varies. This is most obvious from a consequentialist point of view, since the harm done by a lie may be anywhere from enormous to non-existent. But even the disrespect for autonomy that a lie expresses depends on the content of the lie. Admittedly, all lying involves *some* disrespect because it aims at falsifying the addressee's perception of how the world is, thereby undermining their ability to reasonably self-govern. But if a lie is meant to only distort its victim's view of the world very little, or in inconsequential ways, then it also isn't meant to interfere with their autonomy very much. So, there can be lies that express very little disrespect.

However, once we have recognized the specific ways in which argumentation appeals to respect for autonomy, we can see that sophisms are actually importantly different from lies. And though sophisms vary in moral seriousness, they always injure respect for autonomy worse than a lie in support of the same claim, all other things equal. To see why, consider this:

On the face of it, the decision to use a fallacy for deceit is puzzling. After all, fallacies are still arguments, carrying the implicit inference claim and therefore the invitation to critical engagement. So, using a sophism means choosing a means of deception that prompts its addressee to engage in activities designed to discover it. Why would people want to employ a tool for deceit that increases its own risk of failure?

Well, fallacies are arguments that reliably succeed at creating the *perception* of (weighty) reasons where there are none (or only much weaker ones). This means that even though they invite reasoned engagement, something about them reduces its effectiveness. Fallacies are arguments clothed in what Govier calls packing strategies, ways to communicate that lower the likelihood of critical engagement. Take the fallacious appeal to public opinion. Human beings are afflicted by

the in-group bias, a cognitive bias that prompts us to evaluate opinions held by our peers more favourably than others. The appeal to public opinion activates this bias. The resulting urge to favor what one's in-group believes undermines the motivation for the critical engagement that the fallacy, because it is an argument, appears to invite. This illustrates how a fallacy places a hurdle at the same time as it issues its false invitation, thereby reducing the self-created risk that the addressee could realize that there is no (good) reason.

If this works, fallacies promise large payouts. Compare persuasion based on a fallacy to persuasion based on standard cases of lying. Accepting a claim based on testimony requires trust. If someone tells us something, we need a reason to believe it, and trust in them as a competent, good faith epistemic agent provides it (Strudler 2010). So lying undermines autonomy through abusing trust *in the liar*. By contrast, arguing does not involve such straight-forward appeal to trust in the arguer. Because arguing invites reasoned engagement, the arguer instead appeals to the addressee's trust in her *own* competence as a reasoner. This has two convenient effects for the sophism-user:

First, because arguing invites critical engagement, the very act of arguing appears to show the arguer's confidence in her own epistemic competence because she signals she trusts her argument will survive the addressee's scrutiny or at least be worth the addressee's time. It also appears to show her good faith because she signals she is willing to submit to the addressee's evaluation. And it appears to show her trust in the addressee because she signals she believes the addressee is capable of evaluating the argument. In this way, arguing's inbuilt expression of respect for the addressee's reasonable autonomy helps establish a relationship trusting enough to get the addressee to risk engagement.

Second, and more importantly, when a fallacious argument persuades, it does so in a way that creates at least the appearance of involving the addressee's own reasoning. This gives it a more potent persuasive force than e.g., mere *telling* has. Above, I mentioned that arguing, through its inference claim, also involves a normative claim. Because arguing presents itself as providing reasons and inviting reasoned engagement, it pushes the addressee to endorse the argument's claim as reasonable *based on their own assessment*. Arguing's inherent expression of respect for autonomy activates the addressee's respect for themselves, prompting them into higher-order endorsement should the argument pass their critical muster, which the fallacy has conveniently undermined. The resulting higher-order endorsement then anchors and strengthens the object-level acceptance of the claim. This effect is even more potent in an argumentative exchange, where the addressee's trust in her own and the arguer's reasoning is strengthened by the impression that both of their reasoning has been subjected to mutual rigorous examination.

This shows that arguing's inbuilt expression of and appeal to respect for autonomy is not a commendable side-effect but an ingredient in argumentation's persuasive force. A fallacy exerts this heightened persuasive force while placing hurdles in the way of actual reasoned engagement. And using a *sophism* means doing so intentionally. That is why using a sophism is worthwhile for the deceiver. And it is also why it is so deeply disrespectful of autonomy. A sophism does not simply involve the disrespect of distorting another's perception of the world. It also, and invariably, involves using an expression of respect for the addressee's autonomy-rights, and an appeal to their self-respect, as a tool for infringing on these rights more effectively. The user of a sophism not only makes a fool of the addressee, as liars do, but manipulates the addressee into making a fool of themselves. Thereby they do not simply disrespect the addressee's autonomy. They show

humiliating contempt for it – a willingness to invoke the respect autonomy commands to undermine it better.

What this means is that sophisms do not simply *fail* at establishing moral legitimacy for the acceptance of a claim the way that, e.g. argumentation which ends in frustration would. Just like arguing in good faith creates something – namely an ongoing moral legitimacy for accepting and acting on the argumentation's result – arguing that uses sophisms also creates something. For an arguer who has used a sophism in order to get a claim accepted, and then acts on its basis, continuously expresses the *disrespect* associated with their arguing. Using a sophism, then, is a very serious moral wrong, and a way of failing to generate a good that goes far beyond mere lack of success.

6. Conclusion

I hope I have now convinced you that fallacy theory should include the intent-based distinction between sophisms and paralogisms in its conceptual toolbox. And I hope that if you are an argumentation theorist, you are now more inclined to re-think argumentation theory's commitment to what pragma-dialectics calls the "externalisation requirement"; the idea that argument analysis and evaluation should do without reference to arguers' internal states. Admittedly, people engage in argumentation for a vast variety of purposes, not all of which need to be reflected in normative argumentation theory. But the creation of moral legitimacy is deeply connected to what makes argumentation distinct as a practice because it arises from arguing's essential connection to respect for autonomy. It should therefore be recognized as one of the argumentative goals with respect to which argumentation ought to be analysed and evaluated – and that is possible only by integrating reference to internal states like intent.

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[1] I believe it is possible to do this even during intrapersonal argumentation, e.g. through rationalisations that are done in bad faith.

[2] It might even be better, if the liar accidentally tells something that they *believe* to be false, but that is actually true.

[3] In a sense, the moral legitimacy that argumentation bestows is similar to the moral legitimacy that voting bestows. Both generate a result *in common* to the participants, one that can be acted upon to continuously express respect. However, a person who engages in good-faith voting expresses respect by treating other participants as beings whose *interests* are equally as important as her own, and who are capable of self-governance via means-ends rationality. By contrast, a person who engages in good-faith argumentation expresses respect by treating her interlocutors as autonomous beings with respect to their capacity to integrate all kinds of reasons (compare Habermas, 1994) In addition, voting generates results that are meaningfully *in common* because it equalizes the power each party has to enforce their pre-set goals. By contrast, good-faith argumentation generates results that are *in common* because it lets participants engage in the mutual correction of their perception of their reasons. Therefore, the moral legitimation that argumentation can provide via its connection to respect for autonomy goes deeper. In addition, it can extend to the acceptance (or rejection) of descriptive claims, whose acceptability does not depend on interests and cannot be legitimated through voting.

[4] That this is so may be obscured by the fact that once a paralogism is discovered, parties should not continue to rely on a flawed argument2's result, and arguers1 should alert their addressees to the mistake. But once an arguer is aware of a paralogism and keeps quiet, the mistake turns into

intentional deceit. As long as a paralogism stays a paralogism, it does not undermine the moral legitimation of the claim. Consider that even after discovering a paralogism, people still consider paralogism-guided actions from *before* the paralogism's discovery as respectful.

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