Vulnerability and Effective Freedom: A Merleau-Pontian View

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Introduction: two concepts of vulnerability in bioethics

The concept of vulnerability has been a controversial topic in bioethics, especially in ethics of medical research involving human subjects for about two decades. In 2001, the National Bioethics Advisory Commission (NBAC) of United States submitted to the President a paper titled *Ethical and Policy Issues in Research Involving Human Participants*, in which the Commission pointed out several problems of the federal regulations for protection of human subjects (45 CFR 46) by Department of Health and Human Services. The regulations were in line with the *Belmont Report* (1979), well known for the three ethical principles (respect for persons, beneficence and justice). The *Belmont Report* showed a great interest in protection of the vulnerable subjects, learning from the postwar history of US in which the unethical medical studies exploited and harmed the vulnerable such as children and the mentally disabled. It called our attention to “one special instance of injustice” which results from “the involvement of vulnerable subjects.” However, it offered no definition of vulnerability, which was one of the difficulties that the NBAC report identified (p. 87). The federal regulations and the *Belmont Report* instead took a so-called “group-based approach” (ibid.) which categorized certain populations (e.g. children, prisoners and mentally disabled persons) as vulnerable groups, without any regard to different contexts and characteristics of each study and subject. This approach has been criticized for leading to discrimination and stereotype. After the NBAC report, research ethics scholars have made a lot of effort to provide an appropriate framework to protect vulnerable subjects (Agrawal 2003; Hurst 2008; Coleman 2009; Lange et al. 2013). In other words, they have tried to answer three questions: What is vulnerability? Who is vulnerable? How can we protect the vulnerable from harm and wrong?

On the other hand, European scholars have argued that vulnerability should be considered as an ontological condition of human being (e.g. Rendtorff 2002). For them, it expresses the finitude and fragility of life, but it has been misunderstood in modern society due to “vulnerability reducing agenda” which aims to eliminate suffering, disability and mortality to create perfect human beings. Rightly understood, the respect for vulnerability can be the essential foundation of ethics, requiring us all to care each other. In this sense, the *Barcelona Declaration*, submitted to the European Commission in

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1998, presented vulnerability as one of four basic ethical principles in European bioethics and biolaw. There seem to be a possible tension between two strands of thought in bioethics: one argues that vulnerability is an attribute pertaining to certain individuals or groups while the other regards it as universal human condition. The former tries to mitigate vulnerability by safeguards, whereas the latter claims that we should recognize and accept our vulnerability as essential. As C. Mackenzie and her colleagues claim, these two conceptions of vulnerability identify important features of the concept and need to be incorporated into an ethics of vulnerability (Mackenzie et al., p. 7). The question is, then, how to articulate them in a coherent manner. When it is all that matters to appropriately protect certain research subjects, this question may be pointless (Wendler 2017). If we want to go further and to rethink philosophically what we are, the question is inevitable.

At the same time, I shall attempt to address other questions in this article: what and how can phenomenology contribute to the (bio)ethics of vulnerability? One possible answer is that phenomenology as method is useful in describing and analyzing the lived experiences of the persons involved in morally problematic situations in terms of vulnerability, and that it can make concrete suggestions to medical researchers and other relevant people about what they should care to protect research participants. Phenomenologists can proceed in this direction through qualitative research such as fieldwork and interview, though this article cannot show it due to lack of preparation.

Another approach is to examine the works of phenomenologists in pursuit of philosophical insights on vulnerability. Some researchers have already adopted this approach. European bioethicists often refer to Levinas as one of the first to emphasize the ethical significance of vulnerability (e.g. Rendtorff 2002). H. ten Have widens his view and looks for ideas on vulnerability in the works of phenomenological philosophers such as Scheler, Sartre Merleau-Ponty and Levinas (Ten Have 2016, pp. 97-105). However, they all seem to implicitly assume that the phenomenological philosophy can only give a universal account of vulnerability. It is this assumption that I challenge, in an attempt to demonstrate that Merleau-Ponty’s philosophy has the potential to articulate the phenomenon of vulnerability.

I begin by examining Merleau-Ponty’s concept of subjectivity, which can be seen as a universal account of vulnerability. Next, I shall examine his description of human existence to find a basis for a specific account of vulnerability which is compatible with the universal account. Finally, Merleau-Ponty’s concept of effective freedom will be shown to be an idea informing us that we can take a spontaneous action without ignoring our own vulnerability; although we might need many different kinds of supports to place our situation into relief.

1 Weakness exposes me to the world and others
In her creative work Erinn Gilson incorporates Merleau-Ponty’s later ontology into her *Ethics of Vulnerability*. In her view the structure of the flesh in *The Visible and the Invisible* can be the basis to make an alternative account of vulnerability to what she calls “a reductively negative understanding,” according to which vulnerability is susceptibility to harm, weakness and incapacity (Gilson 2014, p. 127). This understanding leads us to fear and avert harm, resulting in stigmatizing certain people as the vulnerable. Gilson claims it is rooted in the dichotomy of activity and passivity, which Merleau-Ponty problematizes by rethinking passivity in terms of receptivity rather than of susceptibility. For Merleau-Ponty, openness is more fundamental relationship with the world than intentional action. I can perceive things insofar as I am among them and as they communicate through me as a sentient being. Using this notion of openness, Gilson conceives vulnerability as a “fundamental mode of passivity” (p. 134).

Gilson’s usage of *The Visible and the Invisible* illustrates the potential of Merleau-Ponty’s ontology for giving a universal account of vulnerability. However, I think it is difficult to rely on his posthumous writings when we address the question of articulation, since there we can hardly know how he thinks of specific contexts in which some of us are unequally exposed to greater risks. His earlier writings are more valuable in this point, as they can be interpreted to describe both the intrinsic and situational aspects of vulnerability.

As for the vulnerability intrinsic to us all, Merleau-Ponty’s account of subjectivity in *Phenomenology of Perception* is of much use. He compares two concepts of subjectivity: one is an idealist concept which defines a subject as “transcendental consciousness in front of which the world is spread out in an absolute transparency, animated throughout by a series of apperceptions” (PhP xxiv).¹ This subject is out of the world and time, so nothing can affect it. In this sense Merleau-Ponty calls it “an invulnerable subjectivity” (PhP xxiii). A true reflection, “a reflection upon an unreflected,” finds this subject naïve, as it forgets “its own beginning,” namely his birth (ibid.). The other concept remembers that a subject is thrown into the world in the event of birth, “situated and engaged in a physical and social world” (PhP 377). Merleau-Ponty also expresses this point using a term “a sort of inner weakness [faiblesse interne],” which exposes the subject to the gazes of others (PhP xxvi). The weakness intrinsic to the subjectivity makes us embodied in nature and situated in history from the beginning of our lives (ibid.).

We can see that vulnerability as openness that Gilson finds in the ontology of the flesh already anticipated in the phenomenology, and what is more, Merleau-Ponty clarifies here that openness includes a relationship with others and situatedness in socio-political contexts. In this regard, his concept of subjectivity can join the criticism of liberal individualism which presupposes that subjects

¹ I refer to Merleau-Ponty’s writings in the form: abbreviation + page. Abbreviations are as follows. PhP: *Phenomenology of Perception*; SNS: *Sense and Non-Sense.*
have their own domain of action and that from this base of independence they enter relationships with others through voluntary agreements. Some critics give a relational account of subjectivity: individuals are constituted through their communicative and interactive relations with each other. They are related in many ways they have not chosen, and they always act in reference to a complex web of social relations and social effects that both constrain and enable them (cf. Young 2007, pp. 46-47). In *Sense and Non-Sense* Merleau-Ponty makes a similar argument, criticizing the alleged Kantian liberalism:

We are inextricably and confusedly bound up with the world and with others. [……] It is simply that all of our actions have several meanings, especially as seen from the outside by others, and all these meanings are assumed in our actions because others are the permanent coordinates of our lives. (SNS 36-37)

In this section we have seen that Merleau-Ponty’s concept of subjectivity can provide a universal account of vulnerability as openness, relatedness and situatedness. This account is consistent with what ten Have calls “vulnerability as relatedness” (Ten Have 2016, p.100), though he does not refer to Merleau-Ponty there. Our next point is whether Merleau-Ponty’s philosophy can help us answer the question of articulation.

### 2.1 Fact as atmosphere

In the chapter on “The Body as a Sexed Being” in *Phenomenology of Perception*, Merleau-Ponty develops his concept of existence. One question he addresses is whether existence can be reduced to sexuality. Against the vulgar view of psychoanalysis, in which human being is fully explained through the sexual infrastructure, he defines existence as intersection of various facts given to it, such as sex and socioeconomic status. In his view, being male (or being heterosexual) does not determine my way of acting, but it is something I assume through each action. It is true that my sexed body is given to me, but it is not my fate. On the other hand, this assumption of facts is not arbitrary, as I am open to them and motivated to assume them in my biological and social life. Facts are neither determinants nor fortuitous attributes of our life, since human existence is “the change of contingency into necessity through the act of taking up (PhP 174). Thus, Merleau-Ponty gives a non-causal or motivational account of the relation between human existence and her facticity.

Merleau-Ponty also describes how our assumption of sexuality affects our perception, using the metaphor of “haze” through which we perceive the world:

This haze contains confused forms and privileged relations, which are not at all “unconscious.”
and of which we know unquestionably that they are seedy, that they have a relation to sexuality, without explicitly evoking that relation. Sexuality emanates like an odor or a sound from the bodily region that it occupies most specifically. […] [Sexuality] can motivate privileged forms of my experience without being the object of an explicit act of consciousness. (PhP 172)

Merleau-Ponty names this mode of sexuality “atmosphere” (ibid.). He often uses this concept to describe phenomena in which something has the function to direct our gaze and to let us see other things without becoming an object. For example, when we take up a light as lighting, it “situates itself as prior to every color,” and the objects we see in this “dominant atmosphere” distribute the colors of the spectrum “according to the degree and to the mode of resistance to this new atmosphere” (PhP 324). Atmosphere is not what we see, but that according to which we see the world.

In the final chapter entitled “Freedom” Merleau-Ponty makes three points on the concept of atmosphere. First, our atmosphere affects not only our perception but our attitude to the world in general. It motivates our action in a certain manner. Second, atmosphere is reinforced through repetition of taking it up. Merleau-Ponty calls it “a sort of sedimentation of our life” (PhP 466), giving perhaps his own example of “an inferiority complex in which I have been complacent now for twenty years” (PhP 467). This past is not just a sum of events, but it has “a specific weight” which makes it unlikely and difficult for us to change our privileged attitude to the world and others.

The third point is that there are historical, social, and cultural atmospheres, which we share with others. Merleau-Ponty describes a class atmosphere shared among workers: in daily lives, they feel themselves “at the mercy of unemployment and prosperity” and “like a foreigner” in their factory and their lives (PhP 469). There are various types of workers such as factory workers, day-laborers and tenant farmers, but they do not need to make any reflective comparison to feel themselves similar to each other, as just a perception of their “tasks and gestures” (ibid.) is sufficient.

Since we were born and opened to natural and historical world, we have various facts with and around us, imposed regardless of our will. We repeatedly take them up in our pre-reflective experience, which reinforce our atmosphere to the extent that it is unlikely that we change our attitude to the world. This is how we feel our style of life natural. As the example of workers implies, the facts may be experienced as oppressive. Even in such a case, we usually assume them as inevitable: “I am accustomed to dealing with a fatum that I do not respect, but that must be humored” (PhP 469). People living in oppressive situation may find no alternative other than to endure it.

In my view, the Merleau-Pontian concept that human existence consists in taking up facts of life can serve as a basis for an analysis of specific vulnerabilities, without inconsistency with the universal account of vulnerability. It will call our attention to the less-obvious types of vulnerability. Let us take some examples from medical research ethics: in his influential article in the 2001 NBAC report, K.
Kipnis distinguishes six types of vulnerability. I shall focus on two types of vulnerability in this paper, ‘deferential’ vulnerability and ‘allocational’ vulnerability. These types of vulnerability are relatively difficult for researchers to notice in the selection of research subjects.

Deferred vulnerability is found when a candidate-subject is “given to patterns of deferential behavior that may mask an underlying unwillingness to participate” in research (Kipnis 2001, G-6). One is deferentially vulnerable if she “care[s] deeply about the opinion of those significant others [colleagues, friends, loved ones and so on]” (G-8). This care may come from her oppressive situation. For example, there are “children who are uncomfortable taking issue with adults” and “third-world women who may find it hard to turn down requests from men, especially if they are respected doctors in white coats” (ibid.). From the Merleau-Pontian perspective, their deferential attitude to powerful others has been fixed through their repeated assumption of the factual social situation, in which children and women are held in obedience to adult men of high status in the family or in the community. They perceive the request of research participation through their social atmosphere and feel it difficult and unlikely to refuse. If researchers did nothing to eliminate the social pressures they feel, the research would be unethical, as the voluntariness of their consent would be distorted.

A candidate-subject has allocational vulnerability when she is “seriously lacking in important social goods that will be provided as a consequence of […] her participation in research” (G-6). Social goods include money, health care and childcare. If a candidate-subject is disadvantaged in the distribution of social goods, “offers of large sums of money as payment for participation or access to free health care services (for conditions not related to the research)” (NBAC 2001, p. 90) are likely to be strong motivations for participation, even if she is aware of the unreasonably high risk of that research. It is her economic atmosphere that makes her unduly induced by external benefit of participation. Due to her economically disadvantaged situation, she may perceive the research as so attractive that she cannot help giving consent.

2.2 Existence as intersection

We have seen that Merleau-Ponty’s concept of existence can be a basis for the analysis of specific vulnerability. The concept helps us understand that we can be vulnerable due to our atmosphere even if there is no explicit coercion. I would like to point out another advantage of the concept: it enables us to take into account the multiplicity and diversity of vulnerability. There are many facts of life that I am offered to take up: body, sex, family situation and socio-economic status, to mention a few. Criticizing the “reductive” (PhP 174) idea that regards one specific fact as the infrastructure, Merleau-Ponty conceptualizes human existence as intersection of various facts: in his view, existence is “the equivocal milieu of their communication [of facts], the point where their boundaries merge, or again, their common fabric” (PhP 169). It follows, then, that we have multiple
All explanations of my behavior in terms of my past, my temperament, or my milieu are thus true, but only on condition of not considering them as separable contributions, but rather as moments of my total being whose sense I could make explicit in different directions, without ever being able to say if it is I who give them their sense or if I receive it from them. (PhP 482)

There is “osmosis” between facts and existence, such that it is impossible to identify the contribution of one kind of motivation and the contribution of others for a certain action, and it is impossible to characterize the action as “sexual” or as “nonsexual” for example (cf. PhP 172).

This intersectionalist concept of existence is, in my view, highly congruent with the “layered” account of vulnerability (Luna 2009). Florencia Luna proposes it against the traditional understanding of vulnerability as “a fixed label on a particular subpopulation” (p. 123), the above-mentioned group-based approach. Her central point is that the idea of layers implies that different types of vulnerability “can overlap” depending on the context (p. 128). For example, a woman living in a country that is intolerant of reproductive rights has a layer of vulnerability (she may not be allowed to make a decision on her pregnancy). If she is poor, another layer overlaps (she may have no access to emergency contraceptives and hence be more susceptible to unwanted pregnancies). If she is illiterate, and if she is a migrant without her documentation in order, she acquires more and more layers (cf. p. 129). It also implies that vulnerability is not her “permanent and categorical condition,” but she is rendered vulnerable through “the interaction of her particular situation and her own characteristics” (ibid.).

As Merleau-Ponty’s notion of existence as intersection suggests, the overlapping layers of vulnerability would be experienced in a compounded way. If she becomes pregnant, it would be an ambiguous difficulty that she would feel in her pre-reflective experience, though she might analyze the layers in reflection. As she has repeatedly assumed the facts of life such as poverty, culture of disrespect for women’s right, and lack of educational access, she might endure the difficulty without seeking necessary support that educated and resourceful women in other countries would enjoy. If she remains unaware of her own vulnerability, it should be counted per se as one layer.

In this section we have attempted to answer the question of articulation from a Merleau-Pontian perspective: Thrown in the event of birth, we are open to the world and situated in social contexts, so we all have the vulnerability as relatedness. Its important consequence is that we are environed by various facts of life. As we repeatedly assume them, they affect our perception and action as atmosphere, privileging particular attitudes to the world. This can make us vulnerable depending on our situation and relationship. Thus Merleau-Ponty provides an articulated account of vulnerability,
which acknowledges both the fact that we are all vulnerable and that some of us are more vulnerable.

3. Effective freedom: an anti-heroic interpretation

This is not the only acknowledgment that Merleau-Ponty makes about vulnerability. On the one hand, he describes how we may ignore our own vulnerability. However, he also suggests how to interpret his notion of freedom as a normative concept which justifies our action to mitigate our contextual vulnerabilities.

In Merleau-Ponty’s view, we must use the notion of motivation instead of cause and reason if “we want to return to phenomena” (PhP 51). In a pre-reflective experience, a non-thetic consciousness perceives a flow of phenomena oriented by “a lived logic that does not give an account of itself” (PhP 50), namely by motivation. In other words, “the sense of the perceived appears to me as instituted within it and not constituted by me” (PhP 275).

It is “the relations of motivation that exists between the exterior and the interior” (PhP 381) that the final chapter “Freedom” takes up as the key to understand what it is like for us to be free in the world. For Merleau-Ponty, freedom does not consist in self-determination without interference by others, but in “an encounter between the exterior and the interior” (PhP 481): my decision is not made through any absolute creation, but it “always takes place upon the basis of a certain given” (PhP 482). Motives offered by my natural and social situation are not obstacles but “means” of my freedom (ibid.): I take up the facts of my life, “what I am by chance” (PhP 483), to realize my freedom in action.

As is well known, Merleau-Ponty refers to the Saint-Exuperian “hero” to suggest how freedom is fully realized (ibid.). It is about this figure that a type of invulnerability is described. A hero “fully lives his relation with men and with the world” (PhP 483) even in a crisis of life. Rather, “when I am in danger, my human situation erases my biological one” and “my body completely merges with action” (PhP 86). In realizing his freedom in a dangerous action (e.g. flying surrounded by enemy fire), the hero ignores or simply forgets his bodily vulnerability: he “feels invulnerable” (SNS 185).

This heroic invulnerability differs from the liberalist variant in that the former never requires the independence from others. However, it is comparable to what Gilson calls “the ideal of invulnerability” in that it seems to suppose the “master model” of subjectivity, in which the body is an object of control, and that it consists in ignorance of vulnerability (Gilson 2014, ch.3). If the realization of freedom entails a move into the heroic invulnerability, Merleau-Ponty’s concept of freedom will be the opposite of the ethics of vulnerability. ³

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² For example, “when I walk along the boulevard, I am unable to see the intervals between the trees as things and trees themselves as the background” (ibid.). See also Wrathall (2004).
³ For details about Merleau-Ponty’s position on heroism in comparison to others, see Smyth (2010).
We can see that it is not the case in considering what he means by “effective freedom.” First, as we have seen, “freedom exists in contact with the world, not outside it” (SNS 148): we effectuate it through our action. Second, it is the central value in Merleau-Ponty’s humanism (cf. SNS 152): it is desirable to effectuate it. Finally, and most importantly, we can realize it only with various supports: “values remain nominal and indeed have no value without an economic and political infrastructure to make them participate in existence” (ibid.). Even the hero needs spiritual connections with his comrades to fight a lone battle (cf. PhP 480).

It is reasonable to think that these supports include the trustworthy social relationship along with economic base. Let me cite an example from a phenomenological study on the lived experience of unauthorized immigrants in Japan (Takaya 2017, ch.6). N, a woman who came from Philippines to Japan in 1988, lived with her four children. She lost her passport after the period of stay, and she had almost no network with friends from Philippines. She did not marry neither of the Japanese fathers of her children, but she had no choice but to depend solely on the father of her three children in all aspects of her life. In addition, his repeated violence made her mentally dominated. According to Takaya, her dependence and vulnerability are “lived as self-evident” (p. 165, my translation).

Therefore, the first goal the NGO worker pursued was not to get the special permission for residence, but to bring her out of the mental dependence on the man. She refused the support at first but came to accept it after years of mere visitation by the worker. The support ranged from paying her rent and phone bill to helping her child take a high school exam. After months of these supports, she was able to refuse a call from the man for the first time. It was only with other social relations and economic base that she could feel it “a real possibility” (p. 168, my translation) to escape his dominion. In other words, her freedom was effectuated on the basis of the NGO’s support.

Takaya notes that it took months after the escape to persuade the woman to ask for the special permission for residence (ibid.). This implies that freedom is not effectuated at one time, and that there is variability in degree of freedom. Merleau-Ponty seems to share these ideas as he writes that our freedom “weakens, without ever becoming zero, to the extent that the tolerance of the bodily and institutional givens of our life diminishes” (PhP 481). If we think our freedom is “either total or non-existent” (ibid.), her reluctance after liberation is incomprehensible. As she lived her “illegality” as self-evident, visiting official bodies such as the embassy appeared extremely uphill. More supports were necessary for her to feel it easier, or as more “immediate possibilit[y]” (PhP 481).

In short, I have interpreted Merleau-Ponty’s concept of effective freedom in an anti-heroic way:

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4 It is arguable whether Merleau-Ponty draws the value from his phenomenology. My current answer is no. In my view, he justifies his humanism by saying that it is the improved version of the traditionally accepted value. He uses phenomenology to show what it is to be free, but he doesn’t claim it can found the value of freedom.
there is no need to ignore our own vulnerability to be free. Rather, we need various supports to effectuate our freedom by degrees, mitigating our overlapping vulnerabilities layer by layer. Interferences for the sake of reducing or eliminating the relations of domination are justified by the humanist value of effective freedom (cf. Young 2007, p. 48). Thus, Merleau-Ponty’s philosophy and ethics can be a helpful ally for the ethics of vulnerability.

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