“Please Don’t Tell” Response

In the case study, “Please Don’t Tell”, the physician faces an ethical issue in deciding whether to tell Consuela of her brother Carlos’s HIV status before Consuela agrees to provide wound care for her brother. This particular issue focuses on two conflicting duties: the duty to warn versus the duty to protect patient confidentiality. Because Consuela will be in the vicinity of Carlos’ open wounds if she gives Carlos wound care, she might be at risk for contracting HIV and should therefore be warned of the potential for contracting this infectious disease. However, Carlos has explicitly instructed his physician to maintain confidentiality and to not inform Consuela of his HIV-positive status.

Leonard Fleck offers commentary on the case and lays out an ethical judgment concerning the physician’s duty. Fleck ultimately concludes that the physician’s duty to protect patient confidentiality supersedes his duty to warn Consuela of any risk. He arrives at this conclusion using a risk reduction strategy. The main question Fleck poses is: does duty to warn rise above duty of confidentiality based on the risks? In order to assess the risk, Fleck consults a standard outlined in Tarasoff v. Regents of the University of California. The rule states that cases concerning the duty to warn must be assessed on three principles: imminent and irreversible harm, alternatives, and proportionality. Fleck does not see the harm posed to Consuela as imminent enough to justify breaching confidentiality. He explains that her chances of contracting HIV from Carlos are remote. In his analysis of alternatives, Fleck argues that there are alternatives to averting the threat other than breaching confidentiality. He explains that training Consuela in universal precautions effectively removes the risk of her contracting the disease. She will be trained, monitored, and even provided equipment to help her observe the universal precautions, much like a healthcare worker would. In terms of proportionality, Fleck concludes that the harm associated with breaching confidentiality outweighs the benefit. The harm to Consuela is minimal in the first place, and can be further minimized by training her in universal precautions. The harm that comes to Carlos as a result of breaching confidentiality, however, is great. Fleck explains that if his HIV status is revealed, he may be ostracized from his family and denied care. By working his way through these three conditions, Fleck concludes that the conditions needed to invoke a duty to warn are not met. Thus, the physician’s duty to maintain patient confidentiality supersedes.

Fleck’s argument relies on a rule utilitarianism ethical theory. In his article, Christian Covenantal Ethics in Cultural Context, Professor Edward Langerak defines rule utilitarianism: “the [view] asserts that actions should follow rules- namely, those rules that would result in the greatest general good if everyone were to follow them” (3). He goes on to say this ethical theory is concerned about setting precedents and about mandating or allowing a type of action, not just a single action. One can see that Fleck relies on rule utilitarianism because he uses a generally accepted rule to weigh the physician’s two duties. He uses the strategy of the three conditions, a precedent.
established by a previous case, to form his argument. Fleck goes through the three conditions (imminent harm, alternatives, and proportionality) and explains why each of them is not met. Because none of the conditions are met, the physician’s duty to protect patient confidentiality wins out, as in accordance with the generally accepted rule concerning duty to warn.

Fleck is taking an individualist approach in his argument. He writes, “we can imagine easily enough that there might be a lapse in conscientiousness on Consuela’s part, that she might come into contact with his blood. But ever if this were to happen, the likelihood of her seroconverting is remote at best.” In this, Fleck makes it clear that the likelihood of transmission between Carlos and Consuela is low. He believes that the risk that comes to Consuela in caring for Carlos is minimal, even though HIV is a deadly disease. In other words, Fleck minimizes Carlos’ status as a vector and maximizes his status as victim. Carlos is living with HIV and this comes with great challenges. As a victim of disease, Carlos should be respected and taken care of as an individual. Moreover, Fleck’s primary concern is the physician-patient relationship. He makes some mention of Carlos in relation to his family, but in this, Carlos is seen solely as the victim. Fleck explains that if Consuela discovers her brother’s status, then she might inform other family members, “which could lead to his being ostracized from the family.” Fleck’s language here demonstrates an individualist approach because he is constructing the paradigm of the individual versus the community. He is not seeking to understand Carlos as part of a complex family and culture; but rather, he is placing Carlos in conflict against his family.

Marcia Angell made many strong points in her commentary to the “Please Don’t Tell” case study. Right off the bat she discusses how she believes that it would be wrong for Consuela to provide care to her brother without being informed of his HIV status. She also claims that doctor/patient confidentiality is strong but not absolute in this case because harm could come to Consuela if she did not take the proper precautions while caring for Carlos. Angell’s core argument states that Consuela has a right to know Carlos’ HIV status for three reasons. First, there is an element of deception involved if Consuela is not informed of her brother’s HIV status. This claim is supported by her view that the physician cannot decide that Consuela should assume this risk because he does not know the breadth of Consuela’s other responsibilities. He only has the right to judge Consuela’s action to treat or not to treat Carlos based on the acquired knowledge of his HIV status. Angell believes that Consuela is a moral agent capable of making her own decisions if given all of the relevant information. Second, the health care system is using and patronizing Consuela by saying that she “must” provide care to her brother because no other care will be made available to him. Under this claim, Consuela is being used as a means to an end only, rather than an end in herself, which violates the Kantian principle that no person should be treated as a means to an end. Finally, Consuela has been previously exploited by her family and unknowingly providing care to her HIV positive brother is another way that she is being taken advantage of. Angell provides evidence for this by attempting to explain Consuela’s responsibilities at home in the present and in the past and her status as a Hispanic female. Angell’s final proposition is that Carlos can accept the care that Consuela offers, but he must inform her of his HIV status. If he chooses not to tell her, Carlos must go without Consuela’s care.
Angell’s commentary reflects Kantian and covenantal ethical theories as well as feminist approach. She believes that Consuela should be treated as a moral agent capable of making decisions if given the proper information. If Carlos’ HIV status is withheld from her, Angell believes that the Kantian ethic that people should not be treated as a means to an end only, but also as an end in themselves, is violated. Angell is also taking a covenantal approach by understanding Consuela in the context of her family and the unique relationship that she shares with her brother. As discussed in Langerak’s article, it is difficult to “reduce covenantal responsibilities to explicit contractual obligations.” As a young girl Consuela was responsible for caring for her younger siblings. As a result of this care, Consuela and Carlos share a relationship that has endured time, and therefore, Carlos has a responsibility to prioritize Consuela’s welfare. Their caring relationship is much more than a shared contract, but a mutual trust; a trust that Carlos would be violating if he chooses to withhold his HIV status from Consuela. Angell also notes that Consuela’s status as the oldest female child in a hispanic family, who has already acted as a “mother” to Carlos should not automatically place her in the role of caregiver to Carlos.

Initially, it seems as if Angell is taking a population based approach to the situation because much of her commentary is dedicated to understanding Consuela as a moral agent, but in her final paragraph she takes a more individualistic approach. Angell acknowledges the relationships that Carlos shares with his family members and Consuela, but her commentary does not quite reach the point of embedding Carlos in a population of potential victims because of her focus on Consuela’s agency. However, Angell did take a step in the right direction concerning Carlos’ relationality. Angell sees Carlos as a victim in this situation, but pays important attention to him as a relational vector of HIV to Consuela. In Angell’s commentary, Carlos has the final say about what should be done with the information. If he should refuse to inform Consuela, his physician should provide alternative arrangements for his care, but it is in no way the physician’s right to violate confidentiality in this situation.

While both Fleck and Angell offer several good points to consider in their analyses of the case, they both fail to fully comprehend the complex social and biological web surrounding Carlos and Consuela. Fleck only offers a bioethics approach to the case study commentary. His focus on Carlos as the victim of the disease and the potential victim of social scrutiny belittles the potential for Carlos to become a vector to Consuela as well as the potential for Consuela to become a victim of HIV and an unintentional vector of HIV to other members of her community. His approach seems to ignore public health concerns regarding infectious disease entirely. While Angell makes strides in acknowledging the social structures of the situation and gives more weight to the potential for Consuela to become a victim, she still does not fully acknowledge or seem to understand the biological embeddedness in this situation. She does not consider the potential for Consuela to become a vector of other diseases to Carlos or the potential for Consuela to become a vector of HIV to other individuals. She lacks the full perspective of both Carlos and Consuela as “Way-Station Selves” that would lend itself to embracing both a bioethics and public health analysis of this study. Neither of the commentators seem to fully combine the individual focus of bioethics and the population focus of public health ethics into a perspective that includes both of these viewpoints.
While Carlos appears to be the clear victim of HIV in this circumstance and the clear potential vector for this disease, Consuela also must be thought of as both potential victim and potential vector. Both of the commentaries in this case study observe that Carlos may be the potential victim of scrutiny and violence from his family if Consuela is informed; however, neither commentary considers that Carlos could also be the potential victim of diseases other than HIV if he is cared for at his home without proper precautions. If Consuela is not given reason to follow universal precautions in her care for Carlos, she may be an unintentional vector to Carlos for some other infectious disease. Due to Carlos’s weakened immune system, he could easily be a potential victim for disease carried by Consuela. In the physician’s analysis of this case, he must consider Carlos’ obvious role as the victim of this disease, as well as his potential to be a vector to Consuela. Additionally, he must consider the potential for Consuela to become a victim and vector of HIV as well as a potential vector of other diseases in her care for Carlos. It is important for the physician to acknowledge the uncertainty that lies in this case. He does not know if Consuela will abide closely to the universal precautions, he does not know how Carlos’ family will respond if they find out about his HIV status, and he does not know what possible diseases Consuela could pass along to Carlos while caring for him. Ultimately, the physician must make a decision that he himself would be happy living with if placed in Consuela or Carlos’ shoes.

We would encourage the physician to consider both Carlos and Consuela as victims and vectors in his decision on what to do about this ethical dilemma. With the PVV(uncertainty) perspective described above, we would urge the physician to counsel Carlos on all of the important reasons that he may want to consider informing Consuela of his infectious disease status before receiving care from her. In addition to protecting Consuela from becoming a potential victim and vector of HIV, he would be protecting himself from becoming a potential victim of other diseases. If Carlos still refuses to inform his sister of his HIV status, he should not be allowed to receive wound care from Consuela. The physician should find another avenue for care in that circumstance, such as offering pro-bono care in his office. Consuela should not be providing care for Carlos without full knowledge of his situation in order to protect both Carlos and Consuela from becoming potential victims and vectors.