The rights of the fetus. Examining the current legal frameworks in English, European and North American law

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Objective
Fetal surgery has developed as both a research entity and an ever-evolving clinical specialty in the last 4 decades. Advances have led to novel techniques for in-utero repair of many malformations including congenital diaphragmatic herniae and myelomeningocele. Practitioners of fetal intervention have thus far had to interpret existing case law and statutes to govern their practice in this developing field. We present a literature review on relevant case law, statutes and academic legal articles that pertain to the practice of fetal intervention for therapeutic and research purposes as a summary and guide for practicing clinicians.

Methods
We searched for all relevant legal cases and statutes in 4 main jurisdictions: English common law, case law of the European Court of Human Rights (ECHR), United States case law and Canadian common law on LexisNexis, WestLaw and directly from the databases of the ECHR and the United States Congress. We also searched for English language academic articles from those aforementioned sources and Medline. All cases, pieces of legislation and legal articles were examined for reference to ‘fetal surgery’ or references to consent, abortion rights, forced medical interventions, definitions of legal status and any other features deemed relevant to fetal-maternal therapy.

Results
In total we found 54 pieces of legislation governing fetal surgery or the treatment of the fetus; 5 in the UK, 2 international pieces of legislation operating in Europe and 2 Acts of Congress in the United States. Most legislation is performed at State level; here we found 45 relevant State Penal Codes, Legislations and Statutes. In total we found 23 relevant cases from the regions researched. No cases directly referenced fetal surgery however 10 cases from English common law are relevant, 5 cases of the European Court of Human Rights and 8 prominent cases from the USA. Finally 37 journal articles were found relating to the ethical and legal concerns that surround the practice of fetal surgery.

Conclusion
Whilst there are a number of legal commentary articles in the body of literature there is a general paucity of actual laws relating directly to fetal surgery. A great deal of legal precedents and statutes are in place already governing the act of intervening on the ‘fetal entity’ as part of operating on the pregnant woman. Current clinical interpretations are predominantly adapted from laws pertaining to abortion rights, precedents relating to the protection of the female patient and court-ordered interventions on pregnant women. The risks of fetal surgery of premature birth, obligatory caesarean deliveries in future pregnancies and potential impacts on maternal autonomy should be weighed against the huge long-term benefits for affected fetuses and expanding treatment choices for mothers. This ethical debate is occurring currently and many scholars and clinicians have highlighted that this expanding field is likely to garner its own legal framework soon, an event that clinicians should take heed to be actively involved in.