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A unified theory of detention, with application to preventive detention for suspected terrorists / Alec Walen

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Abstract:	<p>This Article argues for a unified theory of detention that explains how the wide range of defensible modes of detention, including the detention of prisoners of war and of some suspected terrorists, can be justified within a liberal tradition that respects the liberty of autonomous individuals. The overarching principle for what the author calls the Autonomy Respecting Model of Detention is this: Those who can be adequately policed and held accountable for their choices as normal autonomous agents and who can control whether their interactions with others will be impermissibly harmful can be subjected to long-term detention only if they have committed a crime for which long-term punitive detention or loss of the right not to be subjected to long-term preventive detention is a fitting punishment. The Autonomy Respecting Model justifies the long-term preventive detention of prisoners of war on the ground that were such prisoners to escape or be released, they would not be policed in a way that would hold them accountable for their use of force in the future. The model justifies the long-term preventive detention of suspected terrorists only in those cases in which they too would be effectively unaccountable for their future actions. Importantly, the autonomy respecting model does not allow the long-term preventive detention of suspected terrorists simply because they are predicted to pose a threat larger than that of almost all other criminals</p>
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