## "Foreign Authority" through a Narrow Lens: Interpretive Incorporation of Treaties

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This Article offers a narrow lens analysis of a key debate over the role of foreign authority in U.S. courts: the use of international human rights treaties in interpreting domestic law. Professor Waters argues that recent U.S. Supreme Court decisions (including Roper v. Simmons) should be viewed as part of a transnational trend among common law courts---a trend that she calls creeping monism. Common law courts are increasingly abandoning their traditional dualist orientation to treaties and are beginning to utilize human rights treaties despite the absence of implementing legislation giving domestic legal effect to the treaties. By developing a wide variety of so-called interpretive incorporation techniques, courts are entrenching international treaty obligations into domestic law, thus becoming powerful mediators between the domestic and international legal regimes.

The Article traces the growing influence of creeping monism and interpretive incorporation, in an attempt to shift the discourse away from the all-or-nothing debate of recent years to a more nuanced understanding of the complexities involved in incorporating international legal sources into the work of domestic courts. Drawing on a six-year study of judicial treatment of the International Covenant on Civil and Political Rights by the U.S. Supreme Court and four other common law jurisdictions, the Article develops a typology of interpretive incorporation techniques that courts are utilizing. It also provides statistical evidence regarding the use of human rights treaties across jurisdictions. Finally, it maps out a possible normative framework for evaluating courts' use of human rights treaties in interpreting domestic law.