**Reply 3: Interpretative power under s.3 of the HRA 1998**

Thank you all for such an insightful discussion. I would wish to add my contribution to the debate.

First, from the discussion, it is clear that Interpretative power under s.3 of the HRA 1998 aims at promoting justice and fairness in a trial. Section 3(1) states that, “So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights." The aforementioned section indicates that the compatibility between primary and subordinate legislation with Conventional rights should only be as far as it is necessary[[1]](#footnote-1). Basically, the court has to assess the case, taking into account applicable laws or statutes and circumstances to determine if the reversed burden of proof is justifiable and proportionate[[2]](#footnote-2). Provisions placing on the defendant the burden of proof, particularly regarding exculpatory facts, create potential violations of presumption of innocence.

In my view, *the reversed onus* is accessed for each case individually, based on its merit. Several court decisions have attempted to shed light on the procedure for determining where a reverse onus is incompatible with Convectional rights presumption and must, hence, be read down to simple *evidential onus[[3]](#footnote-3)*. In conclusion, it is hard to find coherence in the application of *reverse onus*.

1. Woolmington v D.P.P. [1935] AC 462. [↑](#footnote-ref-1)
2. ECHR. Cf. R. v H[2001] EWCA Crim 1024 [↑](#footnote-ref-2)
3. Dennis, The Law of Evidence, 4th edn (London: Sweet & Maxwell, 2010), Ch. 11 [↑](#footnote-ref-3)