

## WHAT HARM “HARMLESS”?

To the Bag:

Bryan A. Garner tackles a good question at the intersection of law and philology (Autumn 2011, “indemnify,” pages 17-24): Is the phrase “indemnify and hold harmless” unitary, or does *indemnify* mean one thing and *hold harmless* another?

Some jurists draw a significant semantic distinction between the two parts. No, the phrase is unitary, Garner argues, leaning heavily on an analysis of the Latin *indemnis* and the English *indemnify*. But is that really where the controversy lies? As I read his discussion, Garner and those who would disagree with him actually agree about the meaning of *indemnify*.

Doesn't the real confusion revolve instead around the word *harmless*? In contemporary English, *harmless* is active, meaning “doing or causing no harm”; in a usage that is now rare, it's passive, meaning “unhurt, uninjured, unharmed” (*OED Online*, s.v. “harmless”). Garner takes for granted the latter, rare usage. From his examples of jurists who, as he sees it, get it wrong, I gather that they assume the former, current usage.

The current usage does lend itself to the interpretation that they put forth and that Garner takes issue with: that *indemnify* means *indemnify* but that *hold harmless* is exculpatory, meaning “to hold to be not harmful” or, more precisely, “to hold to have caused no harm.”

In this case, it is easier to find agreement on the definition of the Latinate, less common word, *indemnify*. What's needed is to clarify the definition of the Anglo-Saxon *harmless*.

Nicholas Frankovich  
New York, New York

