the Commission could make arbitrary rules. The power to regulate is the power to destroy. Denial of a rate change or enforcement of a bureau tariff could force some carriers out of business. If the Commission wanted to, it could use the inherent ambiguity of statutory laws pertaining to motor carrier regulation to ride roughshod over the industry and the consumers who depend on it. If it seeks to be conscientious, the Commission will become bogged down in minutiae trying to determine if rates are or aren't "compensatory," whether they are "discriminatory," and if they are, whether they are permissible as part of a broader scheme of "cross subsidization." When these terms are defined, they are often defined differently. Even if uniformity of definition could be arrived at, the question of whether the defined act is allowable as a "reasonable" practice is still subject to difference of opinion.

The petitioners before the Commission are rarely very helpful in defining terms. Words and phrases are used in a pejorative fashion. They become weapons to batter one's opponents in the hearing process. A petitioner will ask the Commission to disallow a competitor's rates because they are *discriminatory* and show *undue preference* which upsets both *rate stability* and *rate uniformity*. In a future case, the roles might be reversed, and the original petitioner will have to defend the same acts it railed against in an earlier case.

Definitions of these terms are plentiful and inconsistent. There are two reasons for this situation. First, the terms are always situational in nature. Firms employ a double standard. If the other guy does it, it's "discrimination." If we do it, it's "cross subsidization." "Discrimination" is, of course, impermissible. Whereas, "cross subsidization" is socially beneficial. Pricing practices, which a third party would view as similar, will be defined in diametrically opposed terms by contending parties.

Second, the terms are difficult to define because the concepts are more imaginary than real. "Discrimination" and "cross subsidization" are so difficult to define because, like leprechauns, only some people can see them. The fact that few others can see them does not stop some people from espousing, at great length, what they eat, what they wear, and where they live—i.e., leprechauns eat cross subsidies in order to maintain rate uniformity.

Is the task of economic policymaking a hopeless endeavor? Like everything else we've looked at, it depends on how that task is defined. As long as the aim of government economic policy is to intervene in private transactions for the purpose of imposing trade conditions that the

transacting parties would not have agreed upon themselves, the task of government's economic policy-making is impossible.

Negotiable Terms

In a market economy, all parties have the freedom to negotiate terms of their own transactions. No one has the authority to impose mandatory trade conditions on anyone else. In such an environment, there is no assurance that the parties can get exactly what they want on their own terms. Losers in the competitive struggle find it easier to blame the "unfair" practices of their rivals than to face the prospect of failure. Economic regulation is a manifestation of this response to unfavorable competitive outcomes. Proponents of government intervention argue that if everyone can be made to conform to "fair" rules, then all can make reasonable profits and survive.

In the absence of government intervention to compel uniformity among competitors, members of the industry are reduced to whatever private agreements they can negotiate. Rate bureaus and traffic pools are an almost ancient device for pursuing private agreements. Private price maintenance agreements rankle antitrust lawyers, while public price regulation is granted greater acceptance. Our public policies ought to be the exact reverse of what they now are. Namely, private price maintenance agreements ought to be allowed, but not legally enforceable. Government enforced price maintenance agreements ought to be abolished.

The old common law practice in which pooling and price fixing were allowed, but not legally enforceable, has much to recommend it. Members of the motor carrier industry claim they need to arrange for rates in concert in order to facilitate interlining. In many instances, this may be true. However, the need to discuss rates and reach agreements for interlining purposes does not require that the agreements attain the force of law, that they be voted upon and collectively imposed on all members of the rate bureau, with the threat of government sanctions for non-compliance.

It is the desire to resort to government coercion that breeds the semantic confusion that Congress is now probing. If no firm were forced to adhere to government imposed economic regulations, there would be no need to wrangle over the meanings of terms like *discrimination* or *cross subsidy*. As anyone familiar with actual business operations must know, the real cost of a particular service is much more complicated than the mere sum of the obvious factors. Firms may legitimately employ apparent below-cost pricing as part of a market penetration strategy, as a loss leader, as a connecting