

By What Authority

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By What Authority, the name of our publication, is English for *quo warranto*.

Quo warranto is the sovereign's command to halt continuing exercise of illegitimate privileges and authority. Evolved over the last millennium by people organizing to perfect a fair and just common law tradition, the spirit of *By What Authority* animates people's movements today.

We the people and our federal and state officials have long been giving giant business corporations illegitimate authority.

As a result, a minority directing giant corporations privileged by illegitimate authority and backed by police, courts, and the military, define the public good, deny people our human and constitutional rights, dictate to our communities, and govern the Earth.

By What Authority is an unabashed assertion of the right of the sovereign people to govern themselves.

PROPERTY PICKS A PRESIDENT

By Mike Ferner

IF EVER POLITICAL PUNDITS enjoyed full employment, it was the time between the 2000 election and George W. Bush's inauguration. Week after week, political science instructors from premier universities spun electoral minutiae to new heights. Nothing was too trivial for some news anchor somewhere.

Reportage from the Disney-ABC-ESPN-A&E-History Corporation advised us that this would not be the first U.S. presidential election "thrown into the House of Representatives." Time-Warner-CNN-AOL-HBO Corporation identified the last one as the Hayes vs. Tilden contest in 1876. And if we watched Westinghouse-CBS-Paramount-MTV-Blockbuster Corporation 'til the wee hours we even learned — can you believe it?! — that Florida's electoral votes were crucial in 1876, too!

Of course, there simply wasn't enough time to mention that the 1876 election was not actually decided by the House; a special Electoral Commission on which Republican U.S. Supreme Court justices held the balance of power decided which electoral votes to count. Nor did we discover that Ohio's Governor Rutherford Hayes could not have won

without critical help from former Confederate generals. And danged if we didn't have to cut to Wolf Blitzer's Live Chad Report — just as we were about to learn that the Commission, the Confederates, and Hayes' victory itself, were all part of a deal brokered by one of the nation's most powerful corporations. Somehow, none of the election night 2000 commentators got around to discussing how men of property have consistently manipulated the rule of law to maintain control and keep Hamilton's "beast" outside the gate.

As election night 1876 advanced past midnight, newspapers rolled off presses announcing a narrow victory for New York Governor Samuel Tilden and the Democrats. Even Republican Party chairman Zach Chandler, calculating that Hayes was 19 electoral votes short, went off to bed. But before dawn the managing editor of the New York Times woke him with a plan to catapult Hayes past Tilden's 300,000 popular vote advantage and into the White House — if Republican-controlled election boards in three southern states would help. Within hours, Chandler began declaring Hayes the new president.

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Property

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Between that bold pronouncement and the March 4 inauguration,¹ the Compromise of 1877 had to be craft-

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Instigating democratic conversations and actions that contest the authority of corporations to govern.

Readers are encouraged to get back to us with comments, questions and suggestions. Please include a way for us to contact you, should BWA want to quote you with attribution.

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ed. Historian C. Vann Woodward contrasted it to the great compromises of 1820 and 1850, which were "publicly debated and published for all to see." The deal in 1877 involved such massive private gain and abandonment of ideals that "neither party to the contract could afford to endorse all the agreements publicly." A "curtain of silence was deliberately dropped" to cover these "secret covenants, privately arrived at."²

History courses taught us that Governor Hayes received the support of southern congressmen in exchange for withdrawing federal troops and ending Reconstruction. In reality, both Hayes and Tilden, and more importantly the wealthy of both North and South, had had enough of Reconstruction. Some historians contend that President Grant had already let the protection of federal troops evaporate in all but three southern states.

W.E.B. DuBois' account of Reconstruction indicates why its days were numbered. "It put such power in the hands of Southern labor that, with intelligent and unselfish leadership and a clarifying ideal, it could have rebuilt the economic foundations of Southern society, confiscated and redistributed wealth, and built a real democracy of industry for the masses of men. What were to be the limits of democratic control in the US? If all labor, black as well as white, became free — were given schools and the right to vote — what control could or should be set on the power and action of these laborers? Was the rule of the mass of Americans to be unlimited, and the right to rule extended to all men regardless of race and color...and how would property and privilege be protected?"³

To DuBois, a new day had begun with southern blacks enacting laws to benefit the disenfranchised of both races — initiating public schools, extending voting rights to white men

without property, and abolishing the whipping post and the branding iron. Breathing life into the ideals of the Declaration of Independence, such changes threatened to unite blacks and poor whites against the land barons.

Important as it was to the power brokers that Reconstruction be formally ended, much more was accomplished by the Compromise of 1877. Exposing the deal that put Hayes in the White House reveals how then, as now, a wealthy minority governed; how then, as now, it divided poor whites and blacks to prevent a democratic revolution in the South and give rise to legal segregation (Jim Crow laws), state-sanctioned lynching, sharecropping and wage slavery; and how then, as now, corporations helped pick presidents after the people cast their votes — stories that History Lite dare not tell.

THE COUNTRY WAS IN FERMENT, having failed for 16 years to settle a presidential election without war or the threat of it. Democratic governors began mobilizing their militias while rifle companies and blood-thirsty rallies materialized in several states. In Ohio's capital, a People's Indignation Convention resolved to take up arms if Republicans controlled the electoral count to Hayes' benefit. Someone fired a shot into Hayes' home. Newspapers called for armed revolt if Tilden lost.

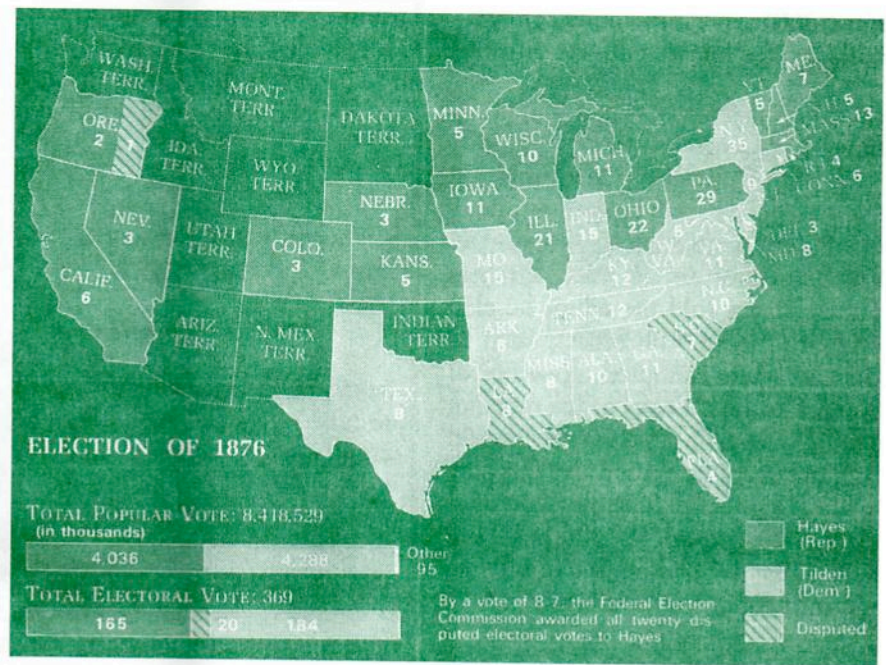
Hidden from public view but fundamental to the outcome was the northern elite's need to keep the South from aligning with an increasingly populist, agrarian west that was raising the specter of democracy. Yankee industrialists, mostly Republicans, had greatly increased their property during the war and had then proceeded to protect their gains by writing laws on taxes, land, finance, corporations, and more.

These were all placed on the books while the South was out of the union and voters were diverted by “bloody shirt” oratory about civil rights and southern atrocities. The political direction of the post-war South would determine the elite’s ability to keep on writing the laws; to choose who would be subsidized and who would pay; who would order and who would obey.

Republican strategists, including Hayes’ fellow Ohioan Congressman James Garfield, outlined a way to attract southern Democrats. Garfield wrote Hayes, “Democratic businessmen of the country are more anxious for quiet than they are for Tilden.”⁴ He suggested that Hayes’ success lay with an appeal to former Whig Party members, the white property owners whose views he already supported.

The wealthy Whigs opposed Jacksonian democracy just as their Federalist predecessors had opposed the Jeffersonian version of government by the people. When this party of the elite split over slavery, some joined with Abolitionists to form the Republican Party and elect Lincoln in 1860, thus denying the wealthiest Whigs control of a major party. Garfield correctly theorized that southern Whigs driven into the Democratic Party in 1860 over slavery would feel more at home with Hayes than Tilden.

It was not difficult for Hayes, a Whig-turned-Republican, to court southern Whigs-turned-Democrats. His post-war vision saw no sectional barriers between men of property, as witnessed in letters exchanged with Guy Bryan, a college classmate from Texas. During the second year of severe economic depression following the Panic of 1873, Hayes complained to Bryan about Ohio miners who “make war on property.” Bryan responded about “similar troubles in the South ever since the war from a discontented and ignorant class” that also “made war on property.”⁵ Thus



did wealth and property, North and South, return to their antebellum alliance.

Included in this alliance were newspaper owners from New Orleans, Louisville, Chicago and Cincinnati, and officials of the influential Western Associated Press, run by Hayes’ closest personal friend and former Ohio Secretary of State William H. Smith. Editorial support was the least of his contributions. After only three months and more than a little corporate help, Smith’s handpicked agents had so effectively maneuvered Washington political networks that they could negotiate the very terms of Hayes’ victory.

The war-ravaged South needed massive federal investment in order to rebuild. Capitalizing on widespread public support for such rebuilding, Texas and Pacific Railway Corporation officials had organized throughout the region, masterfully promoting T & P’s strategically-placed branch lines as the very embodiment of internal improvements for the whole South. President Tom Scott, also head of the sprawling Pennsylvania Railroad

Corporation, was experienced at buying and bullying state legislatures. However, by 1877 his reach was so overextended that only a federal bailout could save him from financial ruin.

On Capitol Hill, Smith’s agents quickly encountered the team Scott had sent to secure his bailout. The winning strategy promptly revealed itself: Scott’s power over southern congressmen could provide their margin of victory. All Scott wanted was tens of millions of acres of public land and more taxpayer dollars than had been spent on all the roads, canals, and railways since the country was founded — and he traded his political clout to get it.

THE DAY AFTER THE ELECTION, presuming defeat and conscious of history, Hayes addressed his diary: “I don’t care for myself...and the country too can stand it; but I do care for the poor colored men of the South.”⁶ By the next month he was bargaining for the presidency and saying differ-

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Property

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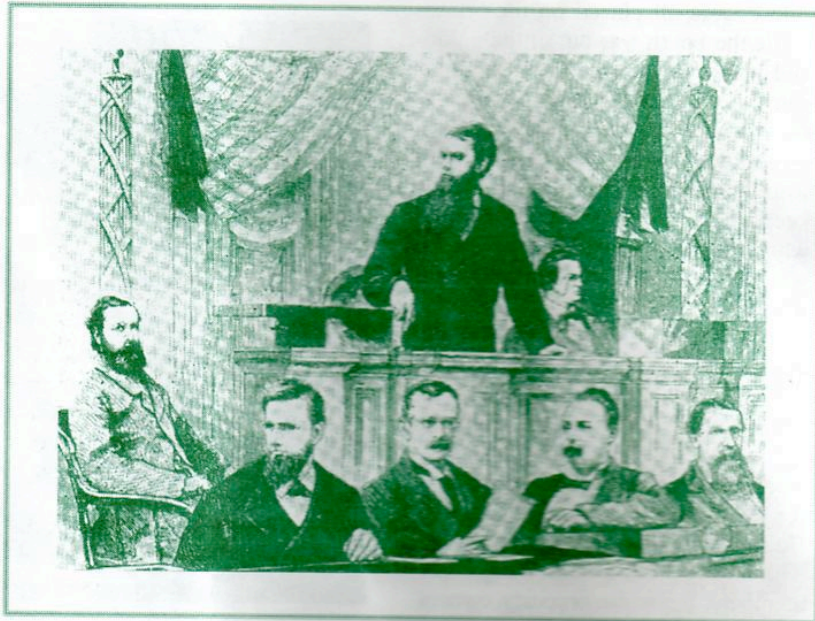
ent things to men who had fought for slavery.

In a December meeting in Columbus, Hayes consulted a former Confederate colonel who had become editor of the *New Orleans Times*. Hayes told the editor he also wanted to meet with others, such as General Wade Hampton, governor of South Carolina. Leaks of the meeting quoted Hayes as saying he would "require absolute justice and fair play to the Negro, but that he was convinced this could be got best and most surely by trusting the honorable and influential southern whites."⁷

It was one thing for Hayes, a Republican moderate, to make such statements. But even the voice of the party's radical anti-Confederate wing confirmed that property's interests were to be served above those of freed slaves. *The National Republican* observed how Reconstruction's carpet-bagger governments, "sustained by the votes of the native menial classes," had excluded "the former governing classes....from all participation in public affairs." This abnormal condition would be corrected when the freed slave, diverted for a time "with the bauble of suffrage" (emphasis added), was persuaded "to relinquish the artificial right to vote for the natural right to live and make peace with his old master." Hunger and cold, the

"It is hardly an accident that on March 2, 1877, when Hayes received the telegram confirming his election, he was en route to Washington in Tom Scott's own private luxury car."

Philip S. Forner,
The Great Labor Uprising of 1877
(Pathfinder, NY, 1977, p. 15)



The Electoral Commission Announces Its Decision.

article concluded, would help guide the decisions of these "simple-minded dependents in choosing between an empty privilege and daily bread."⁸

Although former slaves were being rapidly abandoned by their former champions, DuBois still contends that "The overthrow of Reconstruction was in essence a revolution inspired by property, and not a race war." Control of new forms of wealth generated by the Civil War "was being developed during the ten years of Southern Reconstruction and was dependent....upon the failure of democracy in the South, just as it fattened upon the perversion of democracy in the North."⁹

Two examples illustrate DuBois' analysis: by 1877, New York's Boss Tweed and Tammany Hall were thwarting democracy with aplomb; and months after pulling federal troops out of the South, President Hayes deployed Army regiments to violently crush striking railroad workers. As the strike spread to Pennsylvania, Tom Scott, "who could make presidents but who at that moment could not make (his) trains

move, advised giving the strikers 'a rifle diet for a few days and see how they like that kind of bread'."¹⁰

From genetic engineering to election engineering, from jurisprudence to jingoism, men of power and property do what's needed to maintain control. Why do "we the people" put up with it?

ENDNOTES

1. In 1933, the 20th Amendment moved the presidential inauguration to January.

2. C. Vann Woodward, *Reunion and Reaction*, Little, Brown, and Co., Boston 1951, p. 4.

3. W. E. B. DuBois, *Black Reconstruction in America*, Atheneum, New York 1975 (originally published 1935), p. 13.

4. Woodward, p. 22.

5. & 6. Woodward, p. 24.

7. Woodward, p. 25.

8. Woodward, p. 212.

9. DuBois, p. 308.

10. Boyer and Morais, *Labor's Untold Story*, UE Press, Pittsburgh 1955, p. 61.

TURNING THE TABLES ON PENNSYLVANIA AGRI-CORPORATIONS

Thomas Linzey founded the Community Environmental Legal Defense Fund (CELDF) in 1995. BWA interviewed him about his work with Pennsylvania communities.

BWA: Tell us about these township ordinances banning corporate hog farms.

TL: Agribusiness corporations are invading Pennsylvania, intent on undermining family farms by creating factory farms across the landscape. Part of their systematic efforts to industrialize food production and land use is to join the Pennsylvania Farm Bureau in pressuring state legislators to prohibit citizens from using their local governments to control what these corporate farms do.

Following the corporations' success in using state law to keep local residents from passing ordinances to deal with various corporate impacts, the CELDF was swamped with calls from voters and elected township officials. Municipal officials were really being squeezed. Residents

wanted them to control these absentee-owned animal factories while the Farm Bureau and agribusiness operatives said it was beyond their authority as public officials to take action.

We saw an opening to raise the broader issues of local democratic control and the corporatization of agriculture through conversations about manure, lagoons, odor, and flies. We decided to invest half our time and resources to this work. Then we drafted model ordinances which could be adopted by municipal governments—not on manure disposal or hogs per acre, but on the core issue of the people's authority to ban non-family owned corporate farms in Pennsylvania

Luckily, we didn't have to reinvent the wheel. Nine states — most recently South Dakota and Nebraska — had adopted referenda prohibiting

non-family owned corporations from engaging in farming of any kind. Drafting the ordinances was easy, since we built on the work of people before us.

Then came the challenge of gaining the trust of local groups and elected officials, to help them understand how a handful of corporations could make fundamental decisions about how our food was produced and our communities run. It has been educational and exciting to work with POCLAD in looking at the history about how wealthy investors got politicians and judges to give power and legal privilege to corporations, and how people have struggled to fulfill a different vision.

To date, five municipal governments in Pennsylvania have adopted an ordinance mirroring the laws adopted in those nine states. We are serving as special counsel to ten other local governments in south-central Pennsylvania wanting to enact identical ordinances.

BWA: How are corporate operatives reacting?

TL: In the beginning, corporations and their nonprofit "shill" groups like the Farm Bureau and the Chamber of Commerce mostly ignored us. Then we were asked by the Chesapeake Bay Foundation to present our ordinances to a statewide local government association attended by over 2000 elected officials. After that, things abruptly changed. A ranking Republican state senator demanded that CELDF be banned from such panels. The Farm Bureau



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AGRI-Corps

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actively interfered in one local government's effort to pass the ordinance. And factory farm operatives began attending local government meetings.

The Pennsylvania Chamber of Commerce also became more active, doing what the Chamber was designed to do — painting people like me and public officials who believe in democracy as rabble-driven advocates of no growth and no jobs. The Chamber also labeled as “anti-agriculture” residents who supported our ordinance.

Our work made the cover of the Chamber's monthly *Advocate for Pennsylvania Business*, with an article titled “There's No Business Like No-Business in Wayne Township” and a graphic of the township surrounded by barbed wire.

BWA: What will your strategy be when corporate farms and their allies take you to court?

TL: Our basic work with local ordinances is to transform the discussion about factory farms into one about corporate control of Pennsylvania communities. We are talking about historical precedents, providing discussion groups with reading materials, making presentations to citizens and government officials, writing opinion pieces in local newspapers. In January we brought in attorney David Cobb, who works with POCLAD, to speak at a mass meeting of township officials and residents about generations of community efforts to assert democratic control over agribusiness and other corporations. Folks were so energized that some continued talking long after the event was officially over.

Such efforts help popular support grow strong enough to confront corporate intimidation and lawsuits designed to throw out the township laws and punish elected officials. A

legal victory in the courts, powered by the network of residents and officials that we're building, will give us momentum to take our work into county and municipal governments across the state. However, win or lose in the courts, widespread public participation in the suits will help create the public education and organization we need to pass state legislation closing Pennsylvania to corporate farms.

As this struggle spreads around the state and more people compare

“(I)t's increasingly clear that the real issue is who, in a democracy, is supposed to make the basic decisions about community values, food production and public health.”

notes about the corporate domination of our daily lives. I wouldn't be surprised to find more conversations about stripping corporations of privileges like freedom of speech and equal protection of the law. CELDF's job is to provide innovative legal tools to stimulate this discussion about claiming our rightful power.

BWA: What will happen if the state courts declare these township ordinances unconstitutional, or if state legislators pass a law banning townships from making the rules for corporate farming within their borders?

TL: Given history and the clout that property, contract and constitutional law gives corporations, we expect a “crisis of jurisdiction” between local and state government, which has a corporate-driven interest in enabling corporate agriculture to flourish. State legislators have already begun stripping control from municipalities on things like “manure management.” Over the past two years, Pennsylvania legislators have also prohibited citizens from using local government to control the spreading

of toxic sewage sludge, from using zoning laws to separate industrial farms from traditional farms, and from establishing conservation zones free of timber harvesting.

Such prohibitions are producing a reaction from the local governments themselves. Fifteen of them have formed the “Coalition to Save Local Governments” to contest the authority of state legislators to strip municipalities of their rights and powers and to challenge corporate authority to dictate public policy.

We see CELDF using this crisis to continue raising the issue of self-governance and how corporate assaults like manure, monopoly and giant chain stores destroying local businesses take basic decisions about our health and security out of our hands. We see a growing understanding in Pennsylvania about the incompatibility of corporate governance with people's ability to create sustainable democratic communities.

BWA: How will we feed ourselves without these giant industrial corporations?

TL: Over the last thirty years, we've lost over 300,000 farm families in this country. Over the last two years, pork prices were driven by corporate mass production to their lowest levels ever. A 250 pound hog, which sold in 1996 for \$51, sold in 1998 for \$31. With the cost of production for family farmers \$38 for that same hog, most of the family farm hog producers went bankrupt or became employees — wage slaves, really — of the agribusiness corporations.

Farmland preservation has also been a giant local issue. Over 4000 acres of farmland are lost annually in a single county in south-central Pennsylvania. Growing numbers of people around here believe the best way to save farmland is to make our family farms profitable again. Yet, state policy paving the way for a corporate factory farm invasion guaran-

tees that family farmers, who take best care of the land, will continue to be wiped out or corporatized.

If absentee corporate owners are allowed to dictate the rules to elected officials, they will continue building monopoly control and driving prices higher, while destroying ground water, property values and quality of life. Even a cursory look at the growing corporate concentration of farm ownership reveals that this transformation is in the 8th inning. Four corporations now control 82% of the beef cattle market, five major packing corporations control 55% of the hog industry. Small family farms, over 94% of all U.S. farms, receive only 41% of all farm income. Suicides have replaced equipment-related deaths as the number one cause of farmer deaths.

We can address this tragedy by replacing the corporate factory farm market with alternatives which support both family farmers and public demand for fresh, safe, organic produce and meats—and for soil and water protection. This means asserting our authority to make the rules over how food is produced in our communities. It means challenging corporate dominance over state legislators, elections, public debate and culture. And of course this involves contesting the crazy notion that corporations should have the constitutional rights of persons and that corporate decisions shaping our communities are private.

CELDF has been active in efforts here to nurture Community Supported Agriculture (CSA). People are able to support local, family-owned farms by buying “shares” of farm production before the growing season begins. In return they receive fresh produce, meat, eggs and cheese weekly from the family farm. We are also hosting several farmers markets, providing farm products directly to the public.

On January 20 and February 3, we showcased these components of food

production in gatherings of elected officials, citizens, farmers, and activists in Fulton and Cumberland Counties. Discussion focused on building sustainable farming communities through local self-governance. With crises of jurisdiction looming as people educate themselves and organize in rural townships, it's increasingly clear that the real issue is who, in a democracy, is supposed to make the basic decisions

about community values, food production and public health.

On the icy, snowy days of a rural Pennsylvania winter, we've taken crucial steps with local communities who have begun to understand this and sound the alarm. CELDF can be reached at 2859 Scotland Rd, Chambersburg PA 17201; 717-709-0457; tal@cvns.net; www.celdf.org.

RESOURCES

THE CORPORATE CONSENSUS: A Guide to the Institutions of Global Power, by George Draffan, published by Blue Mountains Biodiversity Project, co-founded by POCLAD's Karen Coulter, Fossil, Oregon. This is a guide to the institutions driving corporate governance. Over 100 pages, it contains an introduction to the dynamics of corporate power and offers detailed profiles of corporate-run institutions like the Trilateral Commission, the Business Roundtable, the Federal Reserve, the Transatlantic Business Dialogue, and many others. Most profiles include office address, structure, agenda, current involvements, meeting times and places, and references for further information. This resource is useful to focus group energy on appropriate institutions and issues for public exposure, legal and political efforts, and direct action. Only \$5 per copy, thanks to support from the McKenzie River Gathering Foundation, Resist Illegitimate Authority, and the Foundation for Deep Ecology; order from and make payable to POCLAD.

STUDY GROUP PACKET: Challenge Corporate Power, Assert the People's Rights, a national campaign of the Women's International League for Peace & Freedom. The ten-session curriculum, with group process guidelines, readings and suggested discussion questions, includes: Introduction to Participatory Process; Historical Overview of the Corporate Taking of Our Authority to Govern; Corporate Personhood; The Regulatory State; Private Property and the Recovery of the Commons; People's and Workers' Resistance Movements; Economic Development and Militarism; Global Corporatization; What Does Democracy Look Like?; Where Do We Go From Here: Local Campaign Development. The study packet is available for \$5 from WILPF, c/o Charmaine Sprengelmeyer, 1213 Race St., Philadelphia PA 19107, or can be downloaded at www.WILPF.org.

SNEAK PREVIEW: POCLAD is publishing several works over the next year, including a booklet on labor rights by Peter Kellman; a collection of POCLAD writings edited by Dean Ritz; and an anthology by Richard Grossman & Ward Morehouse, as well as a book by them, on corporations vs. democracy. Dates & details later.