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To cite this article: Francesco Laruffa & Aris Martinelli (2022): Neoliberal globalization, hegemonic crisis, and the struggle for a countermovement the case of the 'Responsible Business Initiative' in Switzerland, *Globalizations*, DOI: [10.1080/14747731.2022.2138262](https://doi.org/10.1080/14747731.2022.2138262)

To link to this article: <https://doi.org/10.1080/14747731.2022.2138262>



Published online: 26 Oct 2022.



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Neoliberal globalization, hegemonic crisis, and the struggle for a countermovement the case of the 'Responsible Business Initiative' in Switzerland

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ABSTRACT

Since the emergence of neoliberalism, the power of multinational corporations has dramatically grown. Given the limits of 'self-regulation' (e.g. Corporate Social Responsibility), this paper examines the attempt to develop a regime of 'public governance' rooted in law-based regulation. The focus is on a referendum voted in 2020 that aimed at regulating Swiss-based multinational corporations. This case is interesting for two reasons. First, Switzerland hosts among the biggest multinational corporations in the world; changing regulations in Switzerland thus implies modifying the rules of globalization as a whole. Second, while corporations are often accused of directly influencing the political agenda through lobby or corruption, in this case citizens were endowed with the power to change the rules for these corporations. While the proposal was finally rejected, the referendum campaign allows reflection on the interplay between globalization and national democratic politics and on the possibilities and difficulties of developing alternative forms of globalization.

KEYWORDS

Neoliberal globalization; corporate social responsibility; public governance; self-regulation; direct democracy; countermovement

1. Introduction

Multinational enterprises are key actors in shaping contemporary globalization. Since the emergence of neoliberalism in the late 1970s, their economic and political power has grown dramatically, thereby eroding the quality of democratic politics. However, the fact that democratic governments appear to be disempowered vis-à-vis corporations does not mean that states are irrelevant: neoliberal globalization has been actively designed and promoted by national governments, which have 'outsourced' part of their power to private actors, especially multinational or transnational corporations (Mayer & Phillips, 2017). In this regime of 'privatized governance', sovereignty thus shifts from the public arena into the hands of private economic actors.

Over the past few decades, following various scandals of human rights abuses and environmental disasters, several protest movements against multinational corporations have emerged (e.g. de Sousa Santos & Rodríguez-Garavito, 2005; Klein, 1999). In response to these critiques and protests, corporations started to engage in 'Corporate Social Responsibility' (CSR), which involves their voluntary commitment to self-established social and environmental standards. Yet, the exercise of 'private power' through CSR has proven to be largely ineffective in concretely ameliorating

the situation (Hertz & Schulz, 2020; Locke, 2013), for instance with respect to working conditions (LeBaron et al., 2022). Moreover, CSR does not put in question the model of private governance, as it perpetuates the regime of self-regulation as opposed to a regime of public governance, thereby preempting and discrediting ‘democratic attempts to define and carry out policies designed to protect the broader public interest’ (Hertz, 2020, p. 112). Hence, overcoming the serious limits of self-regulation in addressing the current social, political and ecological crises requires a return to some forms of ‘public governance’ rooted in law-based regulation.

This paper examines the attempt to develop such a law-based approach in Switzerland, focusing on the case of the ‘Responsible Business Initiative’ (RBI) voted on in November 2020 that aimed to regulate multinational corporations with their headquarters in Switzerland. In particular, the goal was to modify the Constitution, adding a new article on the civil responsibility of companies and obliging the Swiss Confederation to take legal actions to ensure that Swiss-based multinational companies respected human rights and environmental standards in their operations abroad as well as at home. On 29 November 2020, despite a (very narrow) majority of votes in favour (50.7%), the majority of the cantons rejected the proposal (12 cantons and five half-cantons opposed it, and eight cantons and one half-canton were in favour).¹ Nevertheless, the campaign around this referendum offers material to consider the interplay between globalization and national democratic politics as well as to reflect on the possibilities and difficulties of developing a more human and sustainable type of globalization.

In this context, the case of Switzerland is interesting for two reasons. First, Switzerland hosts among the biggest and most important multinational corporations in the world. These companies are often the leaders in ‘global value chains’, and while they operate in many different countries, they have their headquarters in Switzerland (Martinelli, 2021a; Nathani & Hellmüller, 2014). While Swiss-based multinationals employ around 1.4 million people, which represents more than a quarter of the Swiss workforce (Federal Statistical Office, 2021), the fact that some of the most important multinational corporations in the world have their headquarters in Switzerland implies that changing regulations in this country has a huge potential for modifying the rules at the global level.

Second, the case of Switzerland is intriguing because of the importance of direct democracy in the Swiss political system. Indeed, what we discuss in this paper is a popular initiative in which the population had the possibility to directly shape the regulation of multinational corporations. While multinational corporations are often accused of directly influencing the political agenda ‘behind closed doors’ through lobbying or even corruption, in this case citizens were endowed with substantial power to challenge the supremacy of these powerful economic actors that are frequently seen as constraining democratic politics.

The paper explains the reasons for the failure of the RBI and the positive results that the social mobilization behind it nevertheless attained. In short, the central questions that we want to discuss are the following: given the evident limits of self-regulation for promoting human wellbeing, social justice and environmental sustainability, what are the possibilities for a law-based approach aimed at (re-)establishing a public regulation of multinational corporations? Focusing on the Swiss case, what are the reasons for the failure of developing such a law-based approach despite the presence of direct democracy? And, finally, what does the failure of this specific referendum tell us about the relationship between (direct) democracy and neoliberal globalization more generally?

The paper is articulated in three main sections. The first section presents the main characteristics of contemporary neoliberal globalization. In the second section, we argue that neoliberalism increasingly faces popular discontent and opposition at the global level. We then distinguish two

kinds of answer to this hegemonic crisis: a de-politicized approach centred on ‘Corporate Social Responsibility’ and aimed at re-establishing the legitimacy of self-regulation; and a law-based ‘countermovement’ aimed at challenging neoliberal hegemony and at subordinating the economy to democratic power. The third section focuses on the RBI as a case study for this law-based approach in a globalized economy: the section presents the history of the referendum and provides more details on its content; it analyzes the arguments and positions during the campaign; and it explains the reasons for the failure of the referendum. Finally, the conclusion summarizes the main contributions of the paper to the literature on neoliberal globalization and its possible alternatives.

2. Neoliberal globalization and the rise of corporate power

In this paper we understand neoliberalism both as the social and economic system that has become dominant since the late 1970s (on neoliberalism as the current historical phase of capitalism, see Chesnais, 2016; Durand, [2014]2017; Husson, 2012; Westra, 2019) and as the ‘free-market’ ideology that legitimizes such system (on the intellectual roots of neoliberalism see e.g. Mirowski & Plehwe, 2009).

The emergence of neoliberalism is linked to the 1973 oil crisis and the rise to power of conservatives (especially Margaret Thatcher in the UK and Ronald Reagan in the USA), as well as to the assault on the postwar social democratic compromise, which consisted of the establishment of the ‘welfare state’ and the extension of labour rights in the Global North. Thus, neoliberalism replaces the phase of ‘embedded liberalism’ (Ruggie, 1982) and the Bretton Woods system, where international economic integration was made compatible with states’ autonomy in pursuing social and economic policies and which allowed democratic governments to be responsive to their citizens. This form of embedded liberalism was not only supported *politically* by the compromise between capital and labour – and thus by the political power of the labour movement (trade unions and social-democratic parties). It was also sustained *economically* through the Keynesian-Fordist model, which established a virtuous circle between mass production and mass consumption and thus between economic growth (i.e. profits) and the increase in the population’s living standards. The economic crisis of the 1970s – and the associated decline of corporate profits – together with the weakening of the labour movement, marked the end of embedded liberalism, as both its political and its economic bases were undermined (Boyer & Durand, 1997).

Hence, while during the postwar phase the countries of the Global North experienced a process of democratization of politics realized by the labour movement, the emergence of neoliberalism is associated not only with the decline of labour but also with the rise of a ‘post-democracy’ in which economic powers tend to override citizens’ capacity to influence the political agenda (Crouch, 2004). Governments are now more responsive to internationally mobile capital than to their citizens and the private power of global economic actors has increased at the expenses of the public power of governments. However, this does not mean that states are passive victims, as they have actively constructed globalized markets, delegating their power to private economic actors and thus ‘outsourcing governance’ (Mayer & Phillips, 2017).

This process of privatization of political power involves especially multinational corporations, which are thus key players in neoliberal capitalism (Crouch, 2004, 2011). Today, multinational corporations often exercise more economic and political power than whole countries (Hertz, 2003): they are in some cases ‘shadow sovereigns’ (George, 2015) that remain largely unaccountable to citizens while taking decisions that shape their living conditions deeply. What makes multinational

corporations so powerful is capital's freedom of movement and thus the availability of an 'exit option': if they do not find favourable conditions in terms of taxation and legislation (for example, in the field of environmental protection and working conditions) in a certain country, corporations can move to another country. In this context, it is not necessary that they actually move, as the threat of moving is enough to secure their power. Thus, through the discourse of 'competitiveness', the needs and preferences of multinational corporations take precedence over those of domestic actors (Linsi, 2020, p. 857). Rather than being democratically accountable, the primary responsibility of policymakers is the enhancement of national competitiveness, providing a good business environment with a view to attracting investments.

These processes were not inevitable: they were the result of explicit political choices that gradually undermined the capacity of states to govern the economy. In its present neoliberal form, globalization implies that national governments are called to be 'responsible' vis-à-vis powerful and internationally mobile economic actors rather than 'responsive' to their citizens (Mair, 2009). Yet, while governments should act *responsibly* according to the expectations of multinational corporations to maximize their profits, the corporations themselves act largely *irresponsibly* from a social and political-democratic viewpoint. Especially since the emergence of 'global supply chains', responsibility for severe environmental damage or human rights violations is diffused until the point of disappearing, so that global supply chains become 'systems of organized irresponsibility' (Kaleck & Saage-Maaß, 2016, p. 102).

3. Opposing 'irresponsible' business? Corporate social responsibility vs. law-based countermovement

In order to make sense of neoliberal globalization and its alternatives, we build on Polanyi (1944/2001) and Gramsci (1971). Both authors highlight how the establishment of 'free' markets is not a spontaneous process but rather constitutes a political project that requires active state intervention. In the contemporary context, this suggests that states not only played a central role in promoting neoliberal globalization but that they are also essential for developing alternatives to the latter. Thus, following Gramsci and Polanyi, we argue that (neo)liberalism is based on the formal separation between the economic and the political spheres, which in practice, however, implies that the political sphere is subordinated to the economic one, and that progressive forces should recognize the political nature of the economy in order to democratize it. In turn, in order to democratize the economy, it is essential to democratize the state itself. Indeed, Polanyi and Gramsci's political ideal entails the subordination of both the economy and the state to the needs of society (Burawoy, 2003). In this context, both Polanyi and Gramsci assign a key role to the labour movement, which is seen as a political actor able to represent the interests of society as a whole.

Against this common background, the two authors are complementary. On the one hand, Gramsci (1971) emphasizes the ways in which capitalist elites create wide-spread consensus for their domination through cultural hegemony, highlighting how the exercise of power – when it is most effective – does not involve coercion and the use of force: powerful groups rule by consent through the exertion of intellectual-ideological and moral leadership. On the other hand, Polanyi (1944/2001) argues that movements toward liberalization that subordinate society to the market tend to generate a 'countermovement' through which society protects itself from the market. As Burawoy (2003, p. 231) puts it: 'Gramsci has a theory of hegemony but fails to provide convincing grounds for a counterhegemony, whereas Polanyi gives us a signpost to an architecture of counterhegemony even as he fails to appreciate the obstacles it must face'. Taken together, the works of

Gramsci and Polanyi allow the theorization of the possibility of a countermovement against the current market-driven form of globalization: this requires breaking the consensus within society (i.e. challenging neoliberal hegemony) and putting pressure on states to regulate the economy in the public interest.

Today, neoliberal globalization increasingly faces popular opposition. In recent decades various movements have emerged opposing ‘corporate globalization’ (Juris, 2008) and fighting for ‘global justice’ (Della Porta, 2007) and for an alternative kind of globalization, e.g. through the ‘World Social Forum’ (Evans, 2008). The discontent with neoliberalism has grown even further since the financial crisis of 2008 and the austerity-oriented responses to it. Referring to Gramsci (1971), the contemporary situation can be described as the ‘hegemonic crisis’ of neoliberal globalization. Indeed, while the dominant economic elites still rule, they have increasingly lost the consensus of the dominated – and this can be linked both to the emergence of progressive social movements for social justice and democratization, such as Occupy Wall Street, as well as to the rise of right-wing, authoritarian, and nationalist-xenophobic populism, which promises to ‘take back control’ (a slogan of the Brexit campaign in the UK) after decades of globalization (Dörre, 2019; Fraser, 2017; Rehmann, 2013). Indeed, for Polanyi (1944/2001) too, the countermovement against the market is not necessarily progressive and might degenerate into fascism.

In this context of hegemonic crisis, the scandals linked to (multinational) corporations making huge profits through the systematic violation of human rights and the overexploitation of nature have also generated widespread indignation. For multinational corporations, the crisis of legitimacy is especially visible in the rise of boycott initiatives, whereby people stop buying products of ‘irresponsible’ companies, or in the *name and shame* campaigns in which activists attacked companies denouncing exploitative working conditions (Bartley & Child, 2011; Klein, 1999; Seidman, 2007). In order to respond to these oppositions and critiques, corporations have adopted various measures, including the engagement in CSR, which consists of the voluntary adoption of social and environmental standards.

Crucially, the diffusion of CSR co-evolves with the liberalization of global capital: CSR *compensates* neoliberalism, compensating for some of its most negative social consequences, thereby also legitimizing the erosion of welfare states in the Global North (Kinderman, 2012, pp. 30–31). In Gramscian terms, CSR can be described as a kind of ‘passive revolution’, whereby the needs of the dominated are partly considered in the actions of the dominant groups but with a view to reinforcing and/or restoring their hegemonic power. Also, as Kaleck and Saage-Maaß (2016, p. 32) argue, boycott campaigns can be criticized for their limited focus (many of these campaigns aim to achieve a specific and concrete behavioural change of the companies involved in scandals without formulating a fundamental critique of the broader context in which these scandals are generated) and for relying on the same neoliberal rationality that characterizes the system that they criticize, whereby individuals are conceived as cost–benefit calculators who try to maximize their utility through consumption.

In short, CSR, boycott campaigns, and ethical/political forms of consumption do not amount to a truly counter-hegemonic project to neoliberal globalization aimed at subordinating the economy to democratic power. Companies behave according to consumers’ ethical preferences, thereby integrating the critiques addressed to the current ‘system’ in management decisions – for example, proposing organic food or fair-trade products – turning these critiques into new profit-making opportunities. The delegation of responsibility for high social and environmental standards to individual consumers’ ethical attitudes and/or the voluntary engagement of companies thus represents a clear failure of democratic institutions that are unable or unwilling to regulate economic activities

in light of the common good. As from a democratic perspective it is the public – rather than corporations – that must ‘set the rules for business’, CSR undermines democratic principles, replacing ‘democratic mechanisms for the articulation and pursuit of the public interest’ (Hertz, 2020, p. 114).

Therefore, we argue that while CSR is inherently part of neoliberal globalization and attempts to preserve the status quo dominated by self-governance, a counter-hegemonic globalization would prioritize the ‘political’ over the ‘economic’, subordinating economic powers within the market to the democratic power of the public sphere. This is where the possibility of a new Polanyian ‘countermovement’ exists. But this requires a *law-based* approach, which recognizes the political nature of the economy. In this context, a political-democratic rationality replaces the logic of the ‘passive revolution’ aimed at re-establishing neoliberal hegemony. While in the approach centred on CSR, companies choose how to consider the interests of self-selected, specific stakeholders, under a law-based approach, companies are liable (under civil and criminal law) when they violate legal norms – and it is society, not companies, that decides what these norms are through democratic procedures. Thus, in the law-based approach, the notion of ‘responsibility’ takes a stronger meaning than in the context of CSR: instead of indicating the voluntary commitments of companies to self-selected social standards, responsibility here implies civic and/or penal liability for those companies infringing democratically determined laws. Against those interpretations of responsibility associated with the neoliberal ideology (see Trnka & Trundle, 2017, for a discussion), the law-based approach thus aims to establish a form of collective responsibility, which, recognizing the political nature of the economy, potentially allows it to be democratized.

However, there is no guarantee that a law-based approach effectively promotes the democratization of the economy. Indeed, very often the law is an instrument for protecting the interests of capital, contributing to the increase of inequalities (Pistor, 2019). This is why it is essential to democratize the state – as the site of law-making – ensuring that it serves the needs of society rather than those of capital.

This opens up the question concerning the actors and strategies that can bring about a law-based countermovement aimed at the democratization of both nation states and the global economy. On the one hand, it seems that the social actors behind the countermovement necessarily need to be internationally organized. Indeed, the contemporary wave of marketization and the international organization of business can be countered only by a global civil society fighting for human and environmental rights (Burawoy, 2015). The concept of global civil society here indicates an international political arena – a global public sphere made up of different non-governmental organizations (NGO) and social movements, as well as the international labour movement, which struggles, both in the Global North and the Global South, to promote social justice and the democratization of the global order (on the internationalization of labour, see Evans, 2010).

On the other hand, in the absence of a global government, it is still *national law* that should be the main vehicle for a law-based countermovement. From this perspective, it is illusory to think that to overcome neoliberalism it suffices to focus on ‘civil society’ without addressing the formal political sphere (Sader, 2008). Hence, the countermovement should aim to make states more responsive to civil society and less responsive to economic powers. The centrality of national governments in overcoming neoliberal globalization becomes evident, if one considers that they are the key actors that sustain it. As Mayer and Phillips (2017, p. 148) argue, the fact that neoliberal globalization is the ‘outcome of choice made by states’ and that ‘state behavior is an outcome of politics’ implies that it is possible to construct alternative systems through political action at the national level.

Table 1 summarizes the main differences between the passive revolution aimed at reinforcing the legitimacy of the current system of private governance through self-regulation (mainly CSR) and the law-based countermovement aimed at establishing a new regime of public governance. The next section focuses on the Swiss referendum on ‘Responsible Business’ that we understand as an attempt to promote the approach of legally binding public governance.

Table 1. Answers to the hegemonic crisis: passive revolution vs. countermovement.

	Passive revolution (re-legitimizing private governance)	Countermovement (reinforcing public governance)
Central actors	Corporations	Civil society and renewed labour movement (acting both at the national and at the international level)
Fundamental goals	Reaffirm neoliberal hegemony	Challenge neoliberal hegemony; democratize the economy
Strategies	Corporate Social Responsibility as a response to boycott campaigns and ethical consumerism	Reinforcement of human and environmental rights through national law
Conception of the relationship between the ‘economic’ and the ‘political’	Formally separated, actually semi-permeable with the possibility of translating economic resources into political ones	Recognition of the political nature of the economy: use political power to reform the economy along democratic lines
Conception of responsibility	Weak (self-regulation, voluntary ethical commitments)	Strong (civil and penal liability)

4. The case of the ‘Responsible Business Initiative’

4.1. History and content of the initiative

The political system in Switzerland is characterized by a federal structure, which is articulated on three levels: the Confederation, the cantons, and the communes, as well as by the presence of direct democracy: alongside the usual voting rights accorded in democracies (general elections), Swiss citizens also have the right to directly vote on specific issues (Frey, 1994). Direct democracy is thus a peculiarity of the Swiss political system, which is based on two different tools: referendum and popular initiative (Linder & Mueller, 2021, pp. 120–122).² All proposals for constitutional amendments and important international treaties are subject to a mandatory referendum which required a double majority – of both the Swiss people and the cantons – in a nationwide vote. Furthermore, most parliamentary acts and regulations are subject to a facultative referendum when 50,000 citizens or eight cantons, within 100 days, demand the holding of a popular vote. Finally, the ‘popular initiative’ allows citizens to propose changes to the Swiss Federal Constitution and/or propose the revision or removal of an existing provision. A vote on a popular initiative requires 100,000 valid signatures of Swiss citizens in 18 months and can be expressed as a fully formulated text or in general terms upon which the Federal Assembly can then make a formal proposition.

The Swiss political system – with its direct democratic instruments – seems to permit a law-based regulation of globalization. Yet optimists should remain cautious. While direct democracy potentially allows citizens to contrast the economic power of the elite and the political power of the state, the elite can still exercise power in the decision-making process, notably in the pre-parliamentary phase of discussion or by influencing the opinion-formation before the ballot (Trechsel & Sciarini, 1998) – and this largely explains the modest success of referenda and popular initiatives in Switzerland (Linder & Mueller, 2021, p. 130).

The ‘Responsible Business Initiative’ (RBI) was launched on 24 April 2015 and submitted on 10 October 2016 to the Federal Chancellery with 120,418 signatures. It is the result of a long-term

mobilization of civil society which started already in 2011 with the ‘Rights Without Borders’ campaign in which a national petition was submitted to ask the government to create the legal basis for companies based in Switzerland to be obliged to respect human rights and the environment everywhere in the world. This process, which culminated in the RBI, was launched by 65 NGOs and supported by a total of 130 civil society organizations, around 60 church and social organizations, and over 650 parishes (Association initiative multinationales responsables, 2020a). Furthermore, some 300 leaders of small and medium-sized enterprises (SME) and several large companies joined the ‘Economy for Responsible Business’ committee, and about 500 politicians from a range of parties joined the ‘Bourgeois Committee for Responsible Multinationals’ (Association initiative multinationales responsables, 2020b).

The RBI was based on three principles (Association initiative multinationales responsables, 2017, 2018; for a juridical analysis, see Bueno, 2019a). First, companies must respect human rights and international environmental standards (CAJ-N, 2018, pp. 9–10). Second, the duty of due diligence implied that firms must identify the risks of human rights and environmental violations in their supply chain, take adequate measures to avoid violations (and to remedy any damage), and communicate how they are addressing these issues. This concept of duty of care is based on the 2011 UN Guiding Principles on Business and Human Rights (OHCHR, 2011, pp. 17–26). Third, the initiative introduced civil liability for damages caused by Swiss multinationals in their subsidiaries and controlled firms abroad. Liability here extended to relations with legally independent companies, if a Swiss multinational exercises economic power over them (e.g. in the case of exclusive production or distribution contracts for the same customer). In order to avoid liability for a wrongful act, a Swiss multinational had to prove that it took all necessary measures to prevent the damage or that its due diligence would not have prevented the damage from occurring. The initiative applied to all multinationals that have their registered office, central administration, or principal place of business in Switzerland, as well as to SMEs active in sectors considered to be at high risk of human rights and environmental violations (extraction and trade in raw materials).

Influenced by the business lobby, the Federal Council rejected the initiative and proposed to the Swiss parliament to submit the initiative to the vote of the people and the cantons and recommending them to reject it at the popular vote (Federal Council, 2017). In this context, the parliament elaborated a counter-proposal to be adopted in case of rejection of the initiative. The counter-proposal reaffirmed the self-regulation approach that characterizes the Swiss legal framework (Bueno, 2019b), introducing only the obligation for companies to publish reports on non-financial issues and a fine of up to CHF 100,000 in the event of a breach of this obligation (Council of States, 2017).

4.2. Forces and arguments during the campaign

Supporters and opponents of the initiative gave rise to a fascinating debate on the effectiveness of multinationals’ self-regulation and on the relevance of public regulation in general. The proponents of the initiative emphasized the limits of self-regulation based on concrete cases. In a documentary film broadcast promoted by the initiators, the Swiss multinationals Glencore and LafargeHolcim were particularly targeted. The proponents targeted the largest coal mine in Latin America (located in Colombia) controlled by Glencore, which is responsible for the contamination of soil and rivers in the region, as well as a large cement plant in south-western Nigeria owned by LafargeHolcim, which causes massive circulation of cement dust and fine particles and thus creates serious health problems for the local population. The message of the film is clear: Swiss companies must be held accountable for illegal acts committed abroad, and victims must have access to redress in

Switzerland. Moreover, for the initiators, voluntary management action is not enough, as corruption in the judicial institutions of the countries concerned paves the way for blackmail by multinationals and the impossibility of seeking redress for the victims. Supporters of the initiative also insisted that the adoption of the RBI based on the civil and penal liability of Swiss multinationals would have brought Swiss rules in to alignment with the situation in other countries.³ Initiators later claimed that a law-based approach for regulating multinationals activity would have prevented unfair competition between substandard and compliant multinationals.

What is important to emphasize here is the relative inaction of the Swiss labour movement. The initiative has been triggered above all by civil society actors (including the major Swiss churches), whereas trade unions were largely cautious and did not mobilize (Martinelli, 2021b, pp. 13–14). The two umbrella federations – the Union Syndicale Suisse (USS, the Swiss Federation of Trade Unions) and Travail.Suisse – and the majority of their affiliated unions have publicly supported the initiative through press releases, voting recommendations, and by relaying arguments of the initiative committee in their journals and social media. Moreover, a former USS co-president was part of the initiative committee, and the USS financially supports Swiss NGOs that have been actively involved in the campaign. However, no union developed its own arguments in favour of the initiative, despite the clear relevance of this issue for (international) labour.

On the other side, the opponents of the initiative include the government, the majority of political parties, and the business community. The arguments used are manifold and are in line with the position of the government and the bourgeois and conservative political parties (Federal Council, 2017). For the latter, the changes in the law proposed in the initiative would have had negative economic effects on companies, thereby undermining Switzerland's international competitiveness. The costs involved in the scheme – reporting, evidence gathering, etc. – were seen as a threat, potentially encouraging Swiss companies to use their 'exit option', thereby transferring production sites abroad and cutting jobs. Many also stressed the difficulty for an accused company to collect evidence abroad and to acquit itself of the charges. Finally, the possibility for victims of wrongdoing to access redress in Switzerland was seen as going against the principle of national sovereignty. For the opponents, this would have meant that another country's legislation and judiciary were not up to scratch, creating political and especially commercial problems with the states in question (Federal Council, 2017, p. 6030).

The majority of big business associations, employers' federations, and industry associations also pointed out the harmful effects of what was seen as a 'reversal of the burden of proof' (e.g. the fact that a company accused of human rights violations abroad must provide evidence to acquit itself of these charges). For the business community, this would have exposed Swiss companies to reputation damage, eroding their competitiveness (Swiss Holdings, 2020; USAM, 2020). Taking up the argument on national sovereignty, these opponents called the initiative 'neo-colonial', claiming that it would have imposed a legal order on other countries. In this manner, the federation of Swiss business federation, Economiesuisse, stated that 'the colonialist spirit behind this strange initiative is particularly shocking. [...] The proposed practices would sabotage the rule of law and all efforts in these countries to establish "good governance"' (Economiesuisse, 2020). Accusing the RBI of being a form of colonialism was a clear strategy to hide the historical role of Swiss multinationals in the Swiss imperialism system (on the specificity of the 'Swiss imperialism without colonies', see Guex, 2021). The business community also argued that the initiative would have worsened the already tense situation in the domestic labour market with the risk of layoffs in Switzerland. Last but not least, the business community denounced the impact of the initiative on Swiss SMEs. Playing on the ambiguity of the initiative's text and based on a broad definition of the 'sectors at risk',

opponents put forward the results of a commissioned study, according to which some 80,000 SMEs would have been potentially affected (Bosshardt & Hermann, 2020), although the initiators estimated that no more than 500 SMEs were affected, and the Federal Statistical Office had put the number at about 15,000 (Martinelli, 2021b, p. 4).

4.3. Explaining the failure of the initiative despite an exceptional campaign

The initiative received 50.7% of the popular vote but was rejected by the majority of the cantons. It was mostly rejected by the vote in the rural cantons of German-speaking Switzerland, which have a more conservative electorate, even though the capital towns of these cantons voted in favour of the text. According to a survey by the Gfs.bern institute (2021), among a representative sample of 3,054 voters, the majority of the popular vote for the initiative was the result of the mobilization of a large part of the voters on the left (Socialist Party and Greens) and about one-half of the political centre (some one-third of the electorate of the Christian Democratic Party and around two-thirds of that of the Green Liberals). Similarly, while this vote mobilized people already interested in politics and rather affluent voters, the strong mobilization of left-wing voters, young people, and women under the age of 50 explains the slightly higher turnout of the vote and the result of the popular vote (Table 2).

By contrast, the rejection of the initiative by the majority of the cantons was achieved thanks to the mobilization of the electorate and sympathizers of the far-right and the right, in particular those of the Swiss People's Party and the Liberal Radical Party. The survey also shows that those who voted YES to the initiative tend to support the Socialist Party, the Greens, and the Green Liberal

Table 2. Voting behaviour by socio-demographic parameters (as a percentage of actual voters).

Parameters	YES (% weighted)	No. of votes
Total	50.7	2,031
Age		
18–29 years	64	228
30–39 years	61	197
40–49 years	52	312
50–59 years	49	422
60–69 years	49	442
70 years and more	39	430
Sex		
Male	57	1,028
Female	43	1,003
Education level		
Without post-compulsory education	43	186
Basic professional training/professional training	42	639
Maturity/higher professional education	50	592
High schools/University/PhD	63	561
Household income		
Up to CHF 3,000	53	66
CHF 3,000–5,000	64	254
CHF 5,000–7,000	55	346
CHF 7,000–9,000	50	326
CHF 9,000–11,000	45	257
More than CHF 11,000	45	494
Confession		
Without confession	62	749
Member of a religious community	45	1,227

Source: Adapted from Gfs.Bern (2021, p. 17).

Party, as well as other parties in which the radical left is also included (Table 3). In general, the people who voted YES supported more public intervention in the economy and the environment as well as the activity of human rights organizations, while those who voted NO feared the problems and costs of implementing the initiative and the effects of an isolated approach at the international level, as well as the consequences for developing countries (Gfn.Bern, 2021, p. 19).

These data suggest that the failure of the initiative is due partly to the persistence of a ‘conservative bloc’ mostly organized in the rural and German-speaking Switzerland. This is certainly true, but this explanation is not the only one. Indeed, the influence of the business community and the weakness of Swiss labour movement are crucial elements that explain the vote. In particular, the labour movement was ‘the great absent’ during the campaign, as all major actors within civil society participated except from it. There are at least three reasons behind the absence of an active campaign from Swiss trade unions. The first is the neo-corporate structure of Swiss labour relations based on a long tradition of social dialogue between employers and unions, in which the latter has a subordinate role and excessive negotiation is favoured over any kind of dispute or conflict (Bonvin & Cianferoni, 2013). Thus, cooperative and consultation-based unionism prevented a more active and frontal campaign towards the business community. The second reason is a more recent change in union strategies. Since the 1990s, faced with the erosion of their membership, many unions have abandoned intervention on the company level in favour of the political arena through media campaigns and participation in referendum or initiatives (Oesch, 2011). While participating in the campaign would have been coherent with this chosen media strategy, the lack of organization at the company level is a factor that could explain the weak mobilization of workers in favour of the initiative. Finally, the ‘exit argument’ advanced by the business community on the possible transfer of jobs after the adoption of the initiative also probably influenced trade union activists, who feared massive layoffs. In this context, unions’ self-interest has possibly played a major role: since union members and workers in Switzerland would not have benefited from the initiative – which aimed at improving working conditions *abroad* – unions decided not to support it, avoiding to break the tradition of social dialogue and to put jobs at risk for reasons of international solidarity.

Despite the failure, the initiative gave rise to an extraordinary mobilization and campaign and allowed a debate on the law-based approach to regulate large Swiss companies that will certainly

Table 3. Voting behaviour by political parameters (as a percentage of actual voters).

Parameters	YES (% , weighted)	N
Total	50.7	2,031
Self-classification left/right		
Completely left (0–2)	97	274
Left (3–4)	77	424
Centre (5)	50	501
Right (5–7)	21	457
Completely right (8–10)	10	247
Sympathy for a political party		
Liberal Radical Party	19	351
The Centre	28	150
Socialist Party	89	375
Swiss People’s Party	15	304
Green Liberal Party	63	185
Green Party	96	207
Other parties	56	166
None	45	152

Source: Adapted from Gfs.Bern (2021, p. 19).

influence the political debate in the years to come and revealed the possibility of the emergence of a progressive front on social and environmental issues in Switzerland.⁴ More than 8,000 volunteers on some 450 local committees mobilized across the country (Association initiative multinationales responsables, 2020b). More than 2,000 actions of information stand in the streets and debate evenings were organized. Some 500,000 flyers and 80,000 flags were distributed, and the initiators' film was widely distributed on social networks and at public events. A total of 500,000 postcards were also sent out, and almost 1,000 volunteers made phone calls to encourage people to vote YES. Finally, about 1,000 articles were written on topics related to the initiative. The initiators conducted a professional campaign through previous contacts with universities and professors to win them over to their cause. Well-known 'ambassadors' from the population were chosen. The money mobilized was also important for both supporters and opponents, and the campaign is considered to be the most expensive in Swiss political history, with around CHF 18 million spent (Bouquin, 2020). On the side of the initiators, in addition to funding from NGOs, the money came from thousands of individual donations. The initiative also took a critical look at the corporate world and highlighted the important role played by large Swiss companies in the global economy. While the initiative focused only on the negative effects of Swiss multinationals abroad, pointing to the most serious forms of labour and environmental exploitation, it also allowed citizens to critically scrutinize the actions of Swiss companies in general.

Crucially, the RBI is only one of many other failed popular initiatives on social justice issues in Switzerland. For example, in 2015 the Swiss population had the opportunity to impose an inheritance tax on the super-rich in a referendum, which was rejected by a large majority of voters, despite the fact that they would have benefited from this tax (Emmenegger & Marx, 2019). More recently, on 26 September 2021 the popular initiative 'Lower taxes on wages, tax capital fairly' was also rejected (Martinelli, 2021c). The failure of these popular initiatives is particularly puzzling because they directly involve citizens. Thus, in these cases, policies are not the direct outcome of lobby on the government or of the influence exercised by powerful actors that act outside public scrutiny. To solve this puzzle, Emmenegger and Marx (2019) emphasize the social construction of citizens' political preferences, highlighting how the economic elites manage to manipulate such preferences through strategic framing, especially in the media. Hence, opponents of the inheritance tax proposal emphasized its negative consequences for the business environment and thus for 'competitiveness' and 'jobs' (Emmenegger & Marx, 2019, p. 104). This is consistent with Gramsci's theory of hegemony, which explains how powerful groups influence public opinion, creating consensus for the status quo.

But beyond this ideological dimension, the relevance of the economic case against the promotion of social goals in all these popular initiatives also reveals the *structural power* of capital, whereby the population's jobs and living standards depend on capital's investment decisions. This problem relates to what Cohen (1989, p. 28) calls 'structural constraints' for highlighting how the 'private control of investment importantly limits the democratic character of the state by subordinating the decisions and actions of the democratic state to the investment decisions of capitalists'. From this perspective, there cannot be a definitive solution to the tension between capitalism and democracy. In the end, realizing the democratic ideal necessarily requires a deeper democratization of the economy and of investment decisions, as the private control of investments 'imposes important constraints on the collective choices of citizens, public control of investment is required as a remedy' (Cohen, 1989, p. 28). Overall, what failed popular initiatives (and referenda) on progressive reform proposals clearly show is that direct democracy, in the presence of a capitalist economy, is not enough to promote emancipatory social change, as the latter requires reversing power asymmetries in society and a more active role of the labour movement.

5. Conclusion

This paper has made two main contributions to the literature on neoliberalism and globalization. First, we have proposed a theoretical framework for understanding neoliberal globalization in terms of ‘private governance’, which in turn allows the interpretation of CSR and other soft-law initiatives centred on promoting corporations’ voluntary commitments to social and environmental standards as definitely part of this paradigm. Building on Gramsci, we have argued that, the current situation is marked by the hegemonic crisis of the neoliberal world order. In this context, CSR can be conceived as an attempt of the dominant classes to re-establish their lost hegemonic power through a ‘passive revolution’, which addresses some of the demands and needs of the dominated, but with a view to reinforce the dominants’ supremacy. Moreover, referring to Polanyi, we have claimed that a ‘counter-movement’ designed to overcome the current neoliberal globalization needs to be centred on a law-based approach, which makes multinational corporations responsive to democratic politics and the respect of human and environmental rights. In this context, we have emphasized the role of nation states – both as the main architects of neoliberal globalization and as central levers for promoting alternatives to the latter. From this perspective, democratizing the economy (i.e. subordinating the economy to the needs of society) requires the democratization of the state, ensuring that the latter is responsive to society (rather than to economic powers). Crucially, a merely formal democratic system – it does not matter if it is endowed with direct democracy instruments – is insufficient, and an active civil society, including a strong labour movement, is essential to democratize the state and the economy.

Second, at the empirical level, we have analyzed the case of the ‘Responsible Business Initiative’ in Switzerland, which aimed to modify the national constitution with a view to holding multinational corporations with their headquarters in Switzerland responsible for violations of human and environmental rights in other countries. Despite the fact that in the end the legislation failed to pass, and the self-regulation approach has won, the popular mobilization around the referendum was a great success. This in turn will probably open up new opportunities to promote progressive reforms in these fields in a country like Switzerland, where many important multinational corporations are based. However, the failure of this initiative also shows the limitations of (direct) democracy in a capitalist system. This suggests that realizing the democratic ideal requires going beyond the principle of formal equality in the political sphere to embrace a conception in which all spheres of society, including the economy, are democratized. Indeed, as long as economic powers are able to influence public opinion, creating consensus for the status quo (ideological/hegemonic power), and have a unilateral say on investment decisions (structural power), the prospects for democracy remain rather narrow. Finally, our study confirms that the hope for a progressive counter-movement aimed at overcoming neoliberal globalization and at subordinating the economy to democratic power can come only from an engaged citizenry within ‘global civil society’, in which a renewed and internationalized labour movement able to challenge the hegemony of private governance should play an important role.

Notes

1. The ‘half-canton’ is a term that designates the following six of the 26 Swiss cantons: Nidwalden, Obwalden, Appenzell Innerrhoden, Appenzell Ausserrhoden, Basel-Stadt, and Basel-Landschaft.
2. Other countries such as Liechtenstein, the region of New England in the United States, as well as several US states (Arizona, Arkansas, California, Colorado, and Oregon), integrate some forms of direct democracy in their political system.
3. For instance, in the United States, the Foreign Corrupt Practices Act of 1977 prohibits US citizens and entities from bribing foreign government officials to benefit their business interests. In France, the Law

2017-399 on the duty of vigilance of parent companies and ordering companies obliges large French companies, controlled companies and subcontractors, and suppliers to create mechanisms to identify risks and prevent human rights and environmental abuses. A similar law is being drafted in Germany, while in the United Kingdom several court cases have held British parent companies responsible for the actions of their overseas subsidiaries (Hertz & Schulz, 2020, pp. 75–78).

4. One year after the vote, the promoters of the initiative formed an association. Financed by NGO contributions and through crowdfunding, the aim of the association is to coordinate the work of the NGOs about these issues, to mobilize federal parliamentarians on these issues, and to monitor the implementation of the counter-project.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by Schweizerischer Nationalfonds zur Förderung der Wissenschaftlichen Forschung [grant number: P500PS_202970] for Francesco Laruffa.

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