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THE WARREN BRIEF

Reading Elizabeth Warren.

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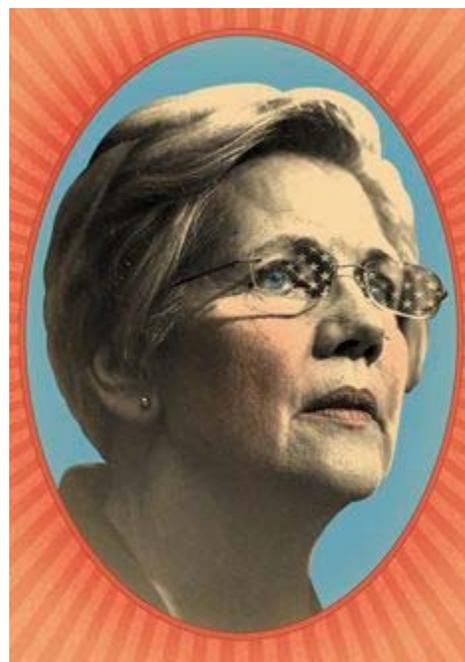
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In her new book, Elizabeth Warren tells the story of her life in order to make an argument about America (the middle class is trapped in a vise of debt), which is the sort of thing politicians do when they're running for office. Warren, who spent most of her career as a law-school professor, was elected to the U.S. Senate in 2012; she's not up for reelection until 2018. "I am not running for President," she insisted at a press conference in Boston in December, pledging that she will finish her term. But the publication, this month, of her autobiography, "A Fighting Chance" (Metropolitan), ahead of a memoir by Hillary Clinton that is due out this summer, only adds to the speculation that Warren is considering challenging Clinton for the Democratic nomination in 2016. And, even if Warren doesn't run, this book is part of that race.

Warren's book was originally called "Rigged," a reference to her contention that the American political system places power in the hands of plutocrats and bankers at the expense of ordinary, middle-class Americans. "Big corporations hire armies of lobbyists to get



Warren believes that the two-income family has contributed to the bankruptcy rate: there's no longer reserve capacity for hard times. Illustration by Shane Harrison.

billion-dollar loopholes into the tax system and persuade their friends in Congress to support laws that keep the playing field tilted in their favor,” Warren writes. “Meanwhile, hardworking families are told that they’ll just have to live with smaller dreams for their children.”

“A Fighting Chance” is in many ways heir to a book published a century ago. “Other People’s Money and How the Bankers Use It,” by Louis Brandeis, appeared in the spring of 1914. Brandeis believed that the country was being run by plutocrats and, especially, by investment bankers, who, by combining, consolidating, and aggregating the functions of banks, trusts, and corporations, controlled both the nation’s credit and the majority of its resources—including the railroads—and yet had not the least accountability to the public or any sense that the functions they had adopted were essentially those of a public utility. “The power and the growth of power of our financial oligarchs comes from wielding the savings and quick capital of others,” Brandeis wrote. “The fetters which bind the people are forged from the people’s own gold.”

Brandeis was concerned with Gilded Age plutocrats’ use of people’s bank savings to build giant, monopolistic conglomerates answerable not to the people but to shareholders. “Other People’s Money,” which originally appeared as a series of essays in *Harper’s*, is a polemic, but it’s also a huge compilation of facts and figures. Brandeis pointed out, for instance, that J. P. Morgan and the First National and the National City Bank together held “341 directorships in 112 corporations having aggregate resources or capitalization of \$22,245,000,000,” a sum that is “nearly three times the assessed value of all the real estate in the City of New York” and “more than the assessed value of all the property in the twenty-two states, north and south, lying west of the Mississippi River.” (Brandeis’s ability to enlist data in the service of a legal argument, a statement known as a “Brandeis brief,” is among his many legacies.) In 1933, Brandeis arranged to have “Other People’s Money” republished—in an edition that cost only fifteen cents—so that it could exert the same influence on F.D.R.’s Administration that it had exerted on Woodrow Wilson’s. In the first decades of the twentieth century, arguments made by writers like Brandeis led to a series of antitrust reforms and financial-industry regulations that, in the middle decades of the century, made possible the growth of the middle class.

Warren is concerned not with saving but with borrowing, not with monopoly but with debt. Since the nineteen-eighties, many Progressive-era and New Deal reforms have been repealed, including a cap on interest rates and a wall, erected in 1933, separating commercial and savings banking from investment banking. In the second gilded age, the fetters that bind the people were forged first from the people’s own credit cards and then from their mortgages. Credit-card companies lured borrowers in with “teaser rates.” Rates of consumer bankruptcy skyrocketed. Eying the profits made by credit-card companies, mortgage companies began selling an entirely new inventory of “mortgage products,” with low down payments, ballooning rates, and prepayment penalties. Home prices shot up, and then they collapsed. “When the housing market sank,” Warren writes, “so did America’s middle class.”

Warren speaks Brandeis’s language. “There is nobody in this country who got rich on his own,” Warren said at a campaign stop in 2011, in remarks that defined her candidacy. “Nobody. You built a

factory out there, good for you. But I want to be clear. You moved your goods to market on the roads the rest of us paid for. You hired workers the rest of us paid to educate.” You used other people’s money. “You built a factory, and it turned into something terrific or a great idea—God bless! Keep a big hunk of it. But part of the underlying social contract is you take a hunk of that and pay forward for the next kid who comes along.” It’s the Brandeis in Warren that got her elected. What she does next will have to do with the many ways in which 2014 is not 1914.

“**A** Fighting Chance” begins this way: “I’m Elizabeth Warren. I’m a wife, a mother, and a grandmother.” Nowhere in “Other People’s Money” did Brandeis mention his life or his family; no doubt, these matters did not strike him as relevant to his discussion of financial oligarchy. Also, Brandeis wasn’t running for office. He was appointed to the Supreme Court in 1916, but, even if he had run for office, and had been required to write the necessary campaign autobiography, its first words would not have been “I’m Louis Brandeis. I’m a husband and a father.”

Warren, like Brandeis, is a lawyer and a scholar. She was born in Oklahoma in 1949, the youngest of four children. When she was twelve years old, her father, a salesman for Montgomery Ward, had a heart attack and lost his job. The family lost a car and might have lost their house if Warren’s mother hadn’t managed to get a job at Sears. Warren went to college on a debating-society scholarship but dropped out when she was nineteen to marry an old high-school boyfriend, Jim Warren. She later finished college and moved with her husband to New Jersey; he’d been transferred there by his employer, I.B.M. Warren started work as a schoolteacher; by the end of her first year teaching, when she was twenty-one, she was pregnant. “Somewhere in between diapers and breast-feeding, I hatched the idea of going to school,” she writes. Her husband didn’t want her to work full time, but agreed that it would be O.K. if she took classes. She decided on law school, because she liked the lawyers on TV. Every day, she brought her daughter, Amelia, to a woman who took care of half a dozen kids, and went to class at Rutgers Law School. By the end of her third year, she was pregnant again; she had a boy named Alex. Much of Warren’s book is about her children and grandchildren. She writes about a moment in 1978: “It was early evening, the cranky time of day. I was jostling Alex on my hip and frying pork chops. Amelia was on the floor with crayons scattered all around. I kept an eye on the clock, knowing Jim would come through the door in about twenty minutes.” The phone rang. It was a professor at the University of Houston Law Center, asking her about a job inquiry she’d sent because her husband might be transferred to Houston. Warren writes, “I tried to sound smooth and relaxed, even as I jiggled Alex furiously in the hope that he wouldn’t start crying. And I kept looking at those damn pork chops.”

Warren got a teaching position at the law school (where she was routinely mistaken for a secretary), and the family moved to Houston. One day in 1979 when she picked up Alex from a day-care center in a strip mall, he held on to her and cried and cried and cried. She took him out of the day-care center. “I was so tired that my bones hurt,” Warren writes. She was about to quit. Then her aunt Bee volunteered to move to Houston from Oklahoma, to help take care of the children. “Nearly eighty years old and so *needed*,” Bee said. Not long afterward, when Warren’s marriage fell apart, her

parents moved to Houston to help out, too. In 1980, Warren remarried.

Warren's interest in debt, she says, is partly personal. "My daddy and I were both afraid of being poor, really poor. His response was never to talk about money or what might happen if it ran out—never ever ever. My response was to study contracts, finance, and, most of all, economic failure, to learn everything I could." Her research led her to conclude that the bankruptcy rate is a canary in the economy's coal mine and that, sometime during the Reagan Administration, the canary died.

The argument Warren offers in "A Fighting Chance" is one that she began to make in "As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America," a monograph written with Teresa A. Sullivan and Jay Lawrence Westbrook and published by Oxford in 1989. Sullivan, a sociologist, is now president of the University of Virginia; Westbrook teaches bankruptcy law at the University of Texas School of Law, where Warren taught from 1981 to 1987. (In 1986, Warren and Westbrook wrote a textbook, "The Law of Debtors and Creditors," currently in its seventh edition.) In "As We Forgive Our Debtors," Sullivan, Warren, and Westbrook reported the results of a study they made of twenty-four hundred bankruptcy petitions filed in 1981. Bankruptcy rates had risen because of the 1978 Bankruptcy Reform Act, which made filing for bankruptcy easier, but also because, by the nineteen-seventies, consumer spending had become the engine of the American economy. Sullivan, Warren, and Westbrook found that most filers weren't cheats or frauds and they also weren't poor; they were members of the middle class, undone by the volatility of the economy and by a six-hundred-billion-dollar consumer-credit industry. More than half were homeowners, and many were women rearing children.

In 1987, Warren began teaching at the University of Pennsylvania Law School. In 1995, she moved to Harvard. In "The Fragile Middle Class: Americans in Debt," published by Yale in 2000, Sullivan, Warren, and Westbrook reported the results of a follow-up study of another twenty-four hundred bankruptcy filings, these from 1991. Even more Americans were drowning in debt. Between 1979 and 1997, the number of personal-bankruptcy filings rose by four hundred per cent.

In an age of debt, an unexpected loss can drive almost anyone to ruin. "Divorce, an unhappy second marriage, a serious illness, no job," Warren writes. "A turn here, a turn there, and my life might have been very different, too."

Louis Brandeis had a knack for making himself an expert on just about anything, but the original "Brandeis brief" was a hundred-and-thirteen-page document that he submitted to the Supreme Court in 1908, in *Muller v. Oregon*, a case concerning a law limiting the workday for women in laundries and factories to ten hours. "The decision in this case will, in effect, determine the constitutionality of nearly all the statutes in force in the United States, limiting the hours of labor of adult women," Brandeis explained in his brief. He proceeded to cite and summarize the findings of hundreds of reports and studies by physicians, municipal health boards, public-health departments, medical societies, factory inspectors, and bureaus of labor, demonstrating the harm done to women who worked long hours, an argument that relied on ideas about women's weakness relative to men. The Oregon law was upheld.

The efforts of a generation of Progressive reformers, including Brandeis, lies behind the abolition of child labor and the establishment of maximum-hour and minimum-wage laws for both men and women. A century later, Warren's brief, too, has to do with the long hours that women work. She's interested in the unintended economic consequences that arise when women rearing children enter the paid labor force. Warren's counterintuitive argument is that, for all the public and private good that has come from gains made by women in education and employment, earning money has made women who are mothers more economically vulnerable, not less.

Warren believes that the two-income family has contributed to the bankruptcy rate. "For middle-class families, the most important part of the safety net for generations has been the stay-at-home mother," Warren and her daughter, Amelia Warren Tyagi, wrote in "The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke" (2003), a book aimed at a wider audience than Warren's earlier, academic work. ("Mom, you are boring," Tyagi told Warren. "Collaborating with my daughter is not for sissies," Warren says.) It used to be that when a middle-class family was faced with a financial crisis the woman in the house could get a job, to tide things over, which is what happened when Warren's father had a heart attack and her mother got a job at Sears. This cushion doesn't exist in the two-income family, which, in its short history—it has its origins, as a middle-class phenomenon, in the nineteen-seventies—has also taken on a great deal more housing debt. The 1974 Equal Credit Opportunity Act required lenders to count a wife's income when evaluating borrowers; the deregulation of the mortgage lending industry began in 1980. With two wage earners and low down payments, middle-class families took on bigger mortgages and contributed to an increase in the cost of housing, especially when families with children paid a premium for property in school districts with high test scores. Financial crisis, for a two-income family, usually means having to live, quite suddenly, on one income. In these straits, families with children tend to totter on the edge of ruin. "Having a child is now the single best predictor that a woman will end up in financial collapse," Warren and Tyagi reported. Between 1981 and 2001, the number of women filing for bankruptcy rose more than six hundred per cent.

Warren entered the world of policymaking when, in 1995, she was appointed to serve on the National Bankruptcy Review Commission, during the Clinton Administration. She found the work thrilling and the results maddening. She describes a report, sponsored by the banking industry, alleging that bankruptcy protection amounted to a five-hundred-and-fifty-dollar "hidden tax" levied on every hardworking American family: "I'd spent nearly twenty years sweating over every detail in a string of serious academic studies, agonizing over sample sizes and statistical significance to make certain that whatever I reported was exactly right. Now the banks just wrote a check, commissioned a friendly study, and purchased their own facts." Warren's frustration was part of what led her to seek a broader audience for her research by writing "The Two-Income Trap," which led to appearances on the "Today" show and "Dr. Phil," where she spoke with a family struggling with debt. "Year in and year out, I'd been fighting as hard as I could," Warren writes. "But by spending a few minutes talking to that family on Dr. Phil's show—and to about six million other people who were looking on—I might

have done more good than in an entire year as a professor.”

Nevertheless, the solutions that Warren has proposed often fail to convince. To counter both the crisis in public education and the high cost of housing, Warren and Tyagi recommend a universal public-school voucher system in which parents could send their kids to any public school: “An all-voucher system would be a shock to the educational system, but the shakeout might be just what the system needs.” Yes, that would be a shock. It would also be reckless.

In 2008, Warren joined a five-person congressional-oversight panel whose creation was mandated by the seven-hundred-billion-dollar bailout. She found that thrilling and maddening, too. In the spring of 2009, after the panel issued its third report, critical of the bailout, Larry Summers took Warren out to dinner in Washington and, she recalls, told her that she had a choice to make. She could be an insider or an outsider, but if she was going to be an insider she needed to understand one unbreakable rule about insiders: “They don’t criticize other insiders.” That’s about when Warren went on the Jon Stewart show, and you get the sense that, over that dinner, she decided to run for office.

Elizabeth Warren has a case to make about what bankers do with other people’s money; she’s been making it for twenty-five years. It’s hardly uncontested, but it rests on collaborative, peer-reviewed, empirical research. Getting that argument across to voters in 2012 required a great deal of compression and simplification, even more than was required to write “The Two-Income Trap,” but Warren’s expertise—her authority as an intellectual—also helped get her elected. Running against Scott Brown, she had to tell a stump-size story about her life, a story that includes this fact: for a time, she was a single mother. That story helped get her elected.

My life explains my fight has been the argument of every American political biography for a long time. When you’re grafting a life story onto a political argument, there will always be places where the grain runs in different directions. (An argument that the system is rigged tends to be somewhat undermined, for instance, by the success of the person pointing that out.) And, particularly for women with children, campaign biography can be a snare. When Wendy Davis decided to run for governor of Texas, her consultants advised her to tell the story of how she started out as a single mother before becoming a lawyer; conservatives accused her of having abandoned her children. This snare exists because political biography as a genre follows conventions whose origins lie with Andrew Jackson, in the early nineteenth century, long before women gained the right to vote or to hold office. Discrimination is the afterlife of discredited ideas. By the standards applied to Davis, who left her two young daughters with their father so that she could go to law school, most candidates elected to office in the United States in the past two centuries abandoned their children.

But there’s another snare here: the danger of adopting, in place of the conventions of the Andrew Jackson’s-bootstraps political biography, the newer conventions of diaper-pin Girl Jacksonianism. Political consultants appear to be eager to advise their female candidates to include, when telling the story of their lives, gauzy intimacies, silly-little-me confessions of domestic ineptitude, stagy performances of maternal devotion, and the shameless trotting out of twinkle-eyed tots. In “A Fighting Chance,” Warren argues that the federal government has allowed an unregulated financial industry to

prey on the middle class; she also writes no small amount about peach cobbler and burned frying pans. Still, she is not adorable; instead, she's fierce in her affections. "Sometimes, late at night, when the house was quiet, I'd scoop Lavinia out of her crib and hold her," she writes, referring to one of her grandchildren. "Not because she needed it but because I did."

Warren is also smart enough to use the conventions of political biography, old and new, to insist on the existence of a relationship between caring for other people and caring about politics. Her brief is really about the abandonment of children, not by women who go to school or to work but by legislatures and courts that have allowed the nation's social and economic policies to be made by corporations and bankers. Writing about her children and grandchildren—rocking that baby—is more than the place where Warren leaves Brandeis behind. It's an argument about where our real debts lie. ♦

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