

LIVING APART TOGETHER, WOMEN, AND FAMILY LAW

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ABSTRACT

“Living Apart Together,” or “LAT,” describes an intimate relationship in which a committed unmarried couple live in separate residences. This Article discusses whether this lifestyle is particularly attractive to women today. After exploring information available about women and LAT in secondary literature from other parts of the world, the author presents new empirical data about LATs in the United States, based on two surveys and a series of qualitative interviews from 2016 and 2017. She examines whether the women respondents and interviewees offer different reasons for living apart than the men do and discusses whether they choose LAT in order to avoid an inequitable division of domestic labor and to preserve their economic independence. The caretaking, both physical and emotional, exchanged by LAT partners is also important to the question whether they represent a new family form and what legal treatment should be given to them. Based on results of the surveys and interviews, she suggests a number of reforms to the family law treatment of such couples, narrowly tailored to the functions they provide both for each other and for society.

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Living with another person, especially across gender lines, can be difficult. This has probably always been so, but it is uniquely difficult in an era of supposed gender equality. Adjusting to the modern context, some couples have found that living in separate residences rather than together works well for them, resulting in an increase in what European commentators have called “LAT,” for Living Apart Together. Some scholars argue that this lifestyle has particular attraction for women, allowing them to maintain their own identities rather than becoming submerged in coupledom, whether married or unmarried.¹ This Article explores that argument in light both of the literature already produced on this issue in non-American contexts and of new U.S. survey evidence, supplemented by qualitative interviews and descriptions of LATs in the popular press. It then discusses how our system of family law should treat these couples. I conclude that a number of legal reforms, such as the extension of hospital visitation rights and family leave for caretaking in illness, eligibility for insurance coverage, and revision of alimony laws, would help to protect women in these couples and the functions they provide for society as a whole.

Social scientists in the U.K., Europe, Australia, and Canada have converged on a definition of LATs as unmarried but committed couples who maintain separate residences (not one home and a second home but two co-equal and independent residences) and have estimated that about 10% of the adult population fall into this category.² My own survey indicates that LATs are present in at least the same numbers in the

¹ See, e.g., Karen Upton-Davis, *Living Apart Together Relationships (LAT): Severing Intimacy from Obligation*, 29 GENDER ISSUES 25 (2012) [hereinafter *Severing Intimacy*]; Karen Upton-Davis, *Subverting Gendered Norms of Cohabitation: Living Apart Together for Women over 45*, 24 J. GENDER STUD. 104, 108 (2015) [hereinafter *Subverting Gendered Norms*].

² Simon Duncan & Miranda Phillips, *People Who Live Apart Together (LATs): New Family Form or Just a Stage?*, 21 INT’L REV. SOC. 513, 515 (2011); Arnaud Régnier- Loilier et al., *Neither Single, Nor in a Couple: A Study of Living Apart Together in France*, 21 DEMOGRAPHIC RES. 75, 85 (2009).

United States.³ The reasons for living separately vary, and the variations correlate with the age – or life stage – of the partners. For example, younger persons who are not yet economically independent live separately because of schools or jobs in different locations, in order to test a relationship before cohabiting or marrying, or because they live with their parents and cannot afford to do otherwise.⁴ Persons in midlife do so both because of constraints, such as the presence of children from a previous relationship living with them or the necessity to care for elderly family members, or out of an affirmative preference for keeping their own homes and maintaining the independence that affords.⁵ Persons beyond the age of child-rearing, including those who are retired, may be unwilling to give up their autonomy and familiar surroundings, to adapt to the living style of another person, or to sacrifice the financial security their own home embodies, and wish to preserve their relationships with and inheritance for their children and grandchildren.⁶ These couples are nonetheless very committed and provide both emotional support and some level of physical caretaking for one another, while maintaining financial independence.⁷ Although they socialize, celebrate special occasions, and travel together, they split joint expenses roughly equally or according to ability to pay and do not, by and large, own any joint assets.⁸ The vast majority live close to one another and are in daily contact, either in person or by telephone or

³ See Cynthia Grant Bowman, *How Should the Law Treat Couples Who Live Apart Together?*, 29 CHILD & FAM. L.Q. 335, 345 (2017). See also Charles Q. Strohm et al., “Living Apart Together” Relationships in the United States, 21 DEMOGRAPHIC RESEARCH 177, 190-92 (2009) (finding that LATs amount to 7% of women and 6% of men in the U.S., but much higher percentages in California – 37% of lesbians and 27% of gay men and 12% of heterosexual women and 13% of heterosexual men).

⁴ See, e.g., Catherine Villeneuve-Gokalp, *Vivre en Couple Chacun Chez Soi*, 52 POPULATION 1059, 1062 (1997); John Ermisch & Thomas Siedler, *Living Apart Together*, in CHANGING RELATIONSHIPS 29, 36 (Malcolm Brynin & John Ermisch eds., 2009); Régnier-Loilier et al., *supra* note 2, at 85.

⁵ See, e.g., Régnier-Loilier et al., *supra* note 2, at 105; Duncan et al., *Why Do People Live Apart Together?* 2 FAMILIES, RELATIONSHIPS & SOCIETIES 323, 328-29 (2013); Irene Levin, *Living Apart Together: A New Family Form*, 52 CURRENT SOC. 223, 232-33 (2004); Irene Levin & Jan Trost, *Living Apart Together*, 2 COMMUNITY, WORK & FAM. 279, 285-86 (1999).

⁶ See, e.g., Vincent Caradec, *Les Formes de la Vie Conjugale des Jeunes Couples Âgés*, 51 POPULATION 897, 905-906 (1996); Jenny De Jong Gierveld, *The Dilemma of Repartnering: Considerations of Older Men and Women Entering New Intimate Relationships in Later Life*, 27 AGEING INT’L 61, 74 (2002); Jacquelyn J. Benson & Marilyn Coleman, *Older Adults Developing a Preference for Living Apart Together*, 78 J. MARRIAGE & FAM. 797, 804 (2016).

⁷ See, e.g., Jenny De Jong Gierveld, *Intra-couple Caregiving of Older Adults Living Apart Together: Commitment and Independence*, 34 CANADIAN J. ON AGING 356, 361-62 (2015); Karlsson et al., *Caring While Living Apart*, 49 J. GERONTOLOGICAL SOC. WORK 3, 17-25 (2007).

⁸ See, e.g., Vicky Lyssens-Danneboom & Dimitri Mortelmans, *Living Apart Together and Money: New Partnerships, Traditional Gender Roles*, 76 J. MARRIAGE & FAM. 949, 957-58 (2014).

electronic means.⁹

The issue for examination here is whether LAT provides a way of maintaining an intimate adult affiliation that is especially attractive to women today, especially to women in different-sex relationships, when their lives have diverged substantially from the breadwinner-homemaker assumptions underlying traditional family law. Does it respond to a preference to maintain their independence, for example, and to avoid an inequitable division of domestic labor? The impact of LAT upon women and the gendered nature of responses to it have attracted attention by social scientists in the U.K., Sweden, the Netherlands, Belgium, Canada, Australia, and Israel, which I describe in Part I below. This issue – and LATs more generally – have not been studied in the U.S., in large part because of the lack of statistics available about this group. In Part II, I present the results of new empirical research about LATs in the U.S., as they pertain to gender. The sources of my data are a nationally representative survey and a separate survey of respondents in New York State, a series of qualitative interviews in the U.S. and U.K., and articles about LATs in the popular press. In Part III, I discuss the conclusions I draw from this research and what implications, if any, they have for law reform.

I. THE LITERATURE ON WOMEN LIVING APART TOGETHER FROM NON-U.S. SOURCES

A gender difference with respect to LAT first attracted the attention of social scientists studying adults in midlife and old age. In 2002, for example, Gierveld published an article drawn from a large-scale study in the Netherlands, focusing on individuals between the ages of 55 and 89 who had repartnered – whether by marriage, cohabitation, or LAT – after being divorced or widowed.¹⁰ She reported that the majority of both men and women repartnering after 1985 chose LAT over remarriage, and women were more heavily represented among the LATs.¹¹ Gierveld noted that the responses of women in her follow-up interviews were consistent with another scholar's finding that “a relatively high percentage of women move away from a male-dominated first marriage toward a power-sharing type of repartnering.”¹²

⁹ Simon Duncan et al., *Practices and Perceptions of Living Apart Together*, 5 *FAM. SCI.* 1-3 (2014); Ermisch & Siedler, *supra* note 4, at 41.

¹⁰ Gierveld, *supra* note 6.

¹¹ *Id.* at 65-66.

¹² *Id.* at 75, citing Karen D. Pyke, *Women's Employment as Gift or Burden? Marital Power across Marriage, Divorce, and Remarriage*, 8 *GENDER & SOC.* 73, 81-85 (1994) (discussing

Another article presented the results of a Swedish study of persons aged between 60 and 90 years old.¹³ Although their study was not based on a representative sample, its authors, Karlsson and Borell, surveyed 116 individuals and carried out in-depth interviews with 14 others.¹⁴ The vast majority (90%) of the respondents were divorced or widowed and had children and grandchildren.¹⁵ The authors reported a gender disparity in the motives LATs gave for living apart, with more women than men mentioning the importance of having a home of one's own and the importance of being freed from duties that would arise if one were married.¹⁶ Based on their data from this and subsequent interviews, Karlsson and Borell theorized that having a separate home allowed women to construct boundaries, both in space and time, to protect themselves against an inequitable division of domestic labor and to allow them to maintain networks of family and friends which might cause conflicts with their partner.¹⁷

The idealized view of home, Karlsson and Borell astutely noted, "is not gender-neutral; it presupposes the care and service [of a woman]," and thus had been a place of work, not rest, for women.¹⁸ All of their respondents mentioned their divorces as a turning point, when they attained a freedom they were not willing to give up.¹⁹ Maintaining a separate residence from a new partner allowed these older women to control how much domestic service and care-related work they gave and to protect their social relationships.²⁰ Ironically, the Swedish LATs tended to meet in the woman's home, and she did the cooking; but she undertook these chores only during the periods the couple spent together and took no responsibility for her partner's home at all.²¹

The Swedish LATs also gave gendered responses to questions about caring for their partners if they were ill or disabled. Although all said they would give some care, albeit a limited amount, significantly more men than women expressed themselves as willing to look after their partners, even full time.²² The authors noted that women were

changes in women's marital power across marriage, divorce, and remarriage).

¹³ Sofie Ghazanfareon Karlsson & Klas Borell, *Intimacy and Autonomy, Gender and Ageing: Living Apart Together*, 27 AGEING INT'L 11 (2002).

¹⁴ *Id.* at 14-15.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 17 (Table 1).

¹⁷ Sofie Ghazanfareon Karlsson & Klas Borell, *A Home of Their Own: Women's Boundary Work in LAT-Relationships*, 19 J. AGING STUD. 73, 75, 79-82 (2005). The reference to a "room of one's own" is to Virginia Woolf's famous essay, *A Room of One's Own*, published in 1929.

¹⁸ *Id.* at 75.

¹⁹ *Id.* at 77.

²⁰ *Id.*

²¹ Karlsson & Borell, *supra* note 13, at 18-19.

²² *Id.* at 20-21.

well aware that care of the elderly was heavily gendered female and surmised that the female respondents were more cautious as a result.²³ A later article specifically about caregiving based on the same Swedish study reported that the women LATs had fewer expectations of care than the men did, while the male LATs claimed to be more willing to provide it, but that the men in fact reported receiving more services in this respect from their partners than the women did.²⁴ So perhaps the older women responding to Karlsson and Borell's questions were simply more realistic than the men.

In 2012, an Australian social scientist, Karen Upton-Davis, published an article based entirely on the European secondary literature, with a heavy emphasis on Karlsson and Borell's findings described above.²⁵ On that foundation, she proposed that women who choose LAT relationships were "resisting the social injustices and systems of oppression that so often accompany living together" and thereby engaging in "a form of political resistance against powerful, patriarchal structures."²⁶ She proceeded to test this hypothesis with a pilot study in which she interviewed 20 women over the age of 45 who said they had affirmatively chosen to live apart.²⁷ Although the study was both small in scale and unrepresentative, she concluded that it supported her previous hypothesis that for women "LAT relationships protect against both the erosion of autonomy and the erosion of resources and that because of the freedom that results...offer more scope for intimacy and emotional connectedness than either marriage or cohabitation..."²⁸ It is difficult to discern the exact support for this hypothesis in her article because Upton-Davis presented only a composite story constructed from the 20 women's separate responses. Nevertheless, she reported that the women, some of whom felt they had previously lost their identities in marriage, were enjoying their independence as LATs, including financial independence, having been liberated "from the bond of economic subservience and domestic service to the men with whom they share an intimate relationship."²⁹

A 2013 article came to similar conclusions, based on the responses of 11 Israeli-Jewish women aged 51 to 61 who were previously married but were currently LATs.³⁰ Like the Australian study, the sample was

²³ *Id.* at 20.

²⁴ Karlsson et al., *Caring While Living Apart*, 49 J. GERONTOLOGICAL SOC. WORK 3, 19, 20, 24 (2007).

²⁵ *Severing Intimacy*, *supra* note 1.

²⁶ *Id.* at 32.

²⁷ *Subverting Gendered Norms*, *supra* note 1, at 107.

²⁸ *Id.* at 110.

²⁹ *Id.* at 112.

³⁰ Ofra Or, *Midlife Women in Second Partnerships Choosing Living Apart Together*, 28 ISR.

recruited by posting appeals in an academic setting, asking friends, and snowball sampling.³¹ The Israeli women described themselves as having established their own identities in a process of growth following divorce.³² Their choice of LAT, the author said, was driven by opposition to traditional gender roles.³³ Nonetheless, during the several days each week the couple was together, typically at the woman's home, she performed traditional gender roles while avoiding them during the remainder of the week.³⁴ The women also tended to "mother" their partner's children and extended family.³⁵ In short, the Israeli LATs, like those in Sweden described above, objected to the traditional division of domestic labor but could not seem to escape it in their new relationships, although they managed to reduce it to part-time or weekend work. They reported that LAT allowed them to escape daily friction and to keep the romance in their relationships alive.³⁶

The Israeli findings were particularly interesting for what they revealed about the women's attitudes toward economic gender roles. The women LATs in Israel found financial independence to be central to autonomy, so much so that it was difficult for them to accept any money from a LAT partner at all.³⁷ Their reactions appeared to reflect trauma experienced upon the breakdown of previous marriages and a determination to protect themselves against any similar economic catastrophe by maintaining total economic independence.³⁸ Based on this small and unrepresentative sample, the author of the Israeli article concluded that "The release from shared property and the separation of economic and geographic domains create[d] a new cultural institution," comparing it to Anthony Giddens' notion of the pure relationship – an intimate sexual and emotional relationship based on equality, trust, and self-disclosure, entered into and maintained for its own sake and not dependent on external factors, such as marriage, children, or economic reasons, to be continued only so long as both parties were satisfied with the personal benefits each derived from it.³⁹

The Israeli findings about the economics of LAT relationships were replicated by a larger-scale study in Belgium specifically on this

STUD. REV. 41, 45 (2013).

³¹ *Id.*

³² *Id.* at 46.

³³ *Id.* at 54.

³⁴ *Id.* at 48.

³⁵ *Id.* at 50-51.

³⁶ *Id.* at 47.

³⁷ *Id.* at 47.

³⁸ *Id.*

³⁹ *Id.* at 53-54. See ANTHONY GIDDENS, THE TRANSFORMATION OF INTIMACY: SEXUALITY, LOVE AND EROTICISM IN MODERN SOCIETIES 58 (1992).

subject.⁴⁰ Its authors interviewed 54 LATs and concluded that gender was the most important factor in how they assigned meaning to money.⁴¹ The LATs in their study maintained separate finances and typically shared costs for food and recreation equally.⁴² For the women, who saw the dangers of financial inequality and wanted to avoid an economy of gratitude, economic independence appeared to be an unconditional requirement of the relationship.⁴³ When they accepted any help at all from their LAT partners – which would only occur because of income disparity or financial difficulty – they were very ambivalent about doing so and placed strict conditions on the exchange.⁴⁴ The male LAT respondents, on the other hand, saw financial sharing as a central part of being a couple, with money as a collective resource, and were uncomfortable with the women’s insistence on full economic independence and equality.⁴⁵

What are we to make of this? For those who have experienced the breakdown of co-residential relationships and the subsequent consequences for women and their children, that experience appears to account for an allergy to economic interdependence on the part of women. Moreover, younger people presumably structure their relationships on the basis of equality today more than in previous eras and thus assume from the beginning that each partner will stand on his or her own feet economically. This is a goal, however, that is often impossible to reach in families with children in an environment where women’s work is paid less than men’s and childcare is expensive. The male respondents to the Belgian survey, by contrast, seemed to embrace a more traditional attitude that might reflect their assumption that they would be the principal providers for any family unit. This might be more realistic in some ways, but their uneasiness with women’s drive for economic independence and equality may also confirm the danger the LAT women perceived and the costs of accepting financial support.

Another recent article examined the gender question in the context of midlife LATs in Canada.⁴⁶ The interviewees were 56 LATs between 39 and 92 years old recruited through university and social media channels, all heterosexual, with an average age of 59 and with three or

⁴⁰ Lyssens-Danneboom & Mortelmans, *supra* note 8, at 950-51.

⁴¹ *Id.* at 952.

⁴² *Id.* at 957.

⁴³ *Id.* at 957-58. The notion of an economy of gratitude is from ARLIE RUSSELL HOCHSCHILD, *THE SECOND SHIFT* 18 (1989).

⁴⁴ Lyssens-Danneboom & Mortelmans, *supra* note 8, at 959-60.

⁴⁵ *Id.* at 959, 962.

⁴⁶ Laura M. Funk & Karen M. Kobayashi, *From Motivations to Accounts: An Interpretive Analysis of “Living Apart Together” Relationships in Mid- to Later-Life Couples*, 37 *J. FAM. ISSUES* 1101, 1105 (2016).

more years' duration in the relationship.⁴⁷ The authors noted that the women LATs' accounts reflected a desire for control over both finances and household labor because of previous experiences of inequity.⁴⁸ Decisional control, in particular, was important to these women – to be able, for example, to spend money on purchases without asking their partners.⁴⁹ Living apart helped them “avoid conflict or resentment related to having to fight or ‘beg’ their partner to complete tasks.”⁵⁰ They also emphasized the ability to avoid risks to their sense of self by maintaining boundaries of all sorts – emotional, spatial, financial, and legal.⁵¹ They wanted to protect the freedom to schedule their days and their pursuits, whether they were social, recreational, or work-related, while still enjoying an intimate relationship with a man.⁵² Living apart allowed them not to lose their identities in the relationship and also, they reported, had a positive effect on the quality of the relationship by avoiding sources of everyday conflict and focusing intensely on one another when they were together.⁵³ The authors commented that LAT thus provided “an individual solution that detracts attention from the broader issue of gender inequalities in cohabiting relationships,” while allowing older women to experience the potential of Giddens' pure relationship.⁵⁴ In other words, the women were able to live relatively autonomous lives in a relatively equitable relationship, so long as it was confined in time and space.

Simon Duncan, a British scholar who has published many studies of LATs, challenged this developing opinion that women were using LAT as a way to undo gender and introduce democracy in their intimate lives.⁵⁵ He criticized the small and selective samples on which these conclusions were based and pointed out that responses to a large-scale, statistically representative 2011 survey of LATs in Britain showed very little variance by gender.⁵⁶ Interviews of individuals drawn from the statistical survey gave similar results, with men's and women's attitudes to LAT almost identical.⁵⁷ Focusing solely on the female interviewees revealed that only a minority of them (seven out of 25) fell into a group

⁴⁷ *Id.*

⁴⁸ *Id.* at 1115.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 1107-09.

⁵² *Id.* at 1109.

⁵³ *Id.* at 1111-12.

⁵⁴ *Id.* at 1119.

⁵⁵ Simon Duncan, *Women's Agency in Living Apart Together: Constraint, Strategy and Vulnerability*, 63 SOC. REV. 589 (2015).

⁵⁶ *Id.* at 591, 594-95.

⁵⁷ *Id.* at 595-96 (Figure 1). The only difference was that women more frequently cited prior obligations to others, specifically their children, as reasons not to cohabit. *Id.* at 595.

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whose reasons for LAT Duncan classified as genuinely purposeful, or chosen; he excluded from this group all who cited any negative reasons for living apart, including not only responsibility for children, other obligations, and external constraints such as lack of money, location of jobs, and incarceration, but also finances, doubts about the current partner, violence, experiences from prior marriages, and the like.⁵⁸ The majority of LATs interviewed, he found, would live together if they could or did not feel vulnerable doing so, even though they enjoyed the incidental benefits and freedom of living apart.⁵⁹ In other words, “LAT was seen as second best.”⁶⁰ Duncan concluded that “women, at least in Britain, seldom use LAT to purposefully or reflexively subvert or undo gender.”⁶¹

Duncan’s analysis was clearly more rigorous scientifically than earlier studies and at the same time more nuanced. He interrogated the concept of autonomy, perceived in terms of agency, as much more complex than a clear on/off capacity to decide for oneself. No one is fully autonomous; even LATs by voluntary choice are constrained by emotional bonds with their partners.⁶² Moreover, he pointed out, new forms of living do not appear one day, fully formed; rather, they grow within and by adaptation from previous lifestyles.⁶³ (This more evolutionary perspective may explain, for example, the tendency of Swedish and Israeli LATs, described above, to live apart to avoid a traditional domestic division of labor yet to perform tasks that have traditionally been gendered female when the couple is together.) At the same time, Duncan’s interviews as well as those in other, albeit non-representative, samples do show that a solid minority of women appear consciously to choose LAT because of their desire for a more egalitarian relationship combined with ample (though never complete) freedom. Moreover, the majority of women LATs who might prefer to cohabit nonetheless enjoy the freedom they have in their current non-residential relationships. Perhaps this is the way social change begins, with a minority opting out of traditional institutions, and others being exposed to the attractions of new living arrangements. My own work, which is the subject of Part II, follows up on these questions.

⁵⁸ *Id.* at 596-98, 597 (Figure 2).

⁵⁹ *Id.* at 598-99, 601-03.

⁶⁰ *Id.* at 602.

⁶¹ *Id.* at 605.

⁶² *Id.* at 600.

⁶³ *Id.* Duncan also notes that “some women who LAT ‘redo’ gendered norms through their everyday practice.” *Id.* at 605.

II. LATs AND GENDER IN THE UNITED STATES

This section discusses information available about LATs and gender in the United States based on three major sources: (1) social science and popular press articles; (2) survey research undertaken in 2016; and (3) a series of qualitative interviews in 2016 and 2017.

A. Social Science and Popular Press Articles

Prior to the empirical research I undertook in 2016, very little information about LATs in the United States was available. The group was invisible in the census categories, classified simply as single persons. A couple of surveys, by now dated and/or limited to a single state, had included a question about whether the respondent lived separately from a partner,⁶⁴ which allowed a modicum of information to be gleaned by cross-tabulating responses to that question with demographic data; the result was two articles by social scientists.⁶⁵ The first focused more on sexual orientation than on gender but pointed to a series of gender differences in its findings

- (1) While 45% of women LATs live with children, only 9% of male LATs do.⁶⁶
- (2) For women, but not men, having a college degree increases the odds of being a LAT rather than married.⁶⁷
- (3) As compared to married couples, heterosexual LATs have more individualistic attitudes, are more work-oriented, and are more likely to prefer that men and women share market and non-market work.⁶⁸
- (4) These attitudinal differences are similar for women and men, except that women LATs are more likely than married women to agree that work is a person's most important activity.⁶⁹
- (5) Lesbians and heterosexual women do not differ significantly in the prevalence of LAT relationships, although the percent of lesbians is marginally higher.⁷⁰

In short, many women LATs, unlike men, were still raising

⁶⁴ NAT'L OPINION RES. CENTER, GENERAL SOCIAL SURVEYS, 1972-2002: CUMULATIVE CODEBOOK Qs. 545-48 (Feb. 2003); UCLA Center for Health Pol'y Res., California Health Interview Survey (2005).

⁶⁵ Strohm et al., *supra* note 3; Benson & Coleman, *supra* note 6, at 800.

⁶⁶ Strohm, *supra* note 3, at 191.

⁶⁷ *Id.* at 194.

⁶⁸ *Id.* at 197.

⁶⁹ *Id.* at 198.

⁷⁰ *Id.* at 200.

children from previous relationships; they tended to be more highly educated than married women; and they were more individualistic, work-oriented, and gender-egalitarian in their attitudes than women in co-residential relationships. LAT may also be especially attractive to lesbians. The other American study relied on interviews with 25 self-identified LATs (10 men and 15 women) between the ages of 60 and 88, who said they were part of a committed couple; they were recruited through an email listserv at a Midwestern university and were clearly non-representative in terms of race, education, and other factors.⁷¹ The authors concluded that the older women's reasons for living apart differed from the men's: the women wanted to avoid the demands of caregiving and an inequitable balance in domestic labor, while the men wanted to protect their leisure time.⁷² Three men reported that they missed the instrumental benefits of marriage or cohabitation, specifically having a wife to perform domestic chores.⁷³ One woman proclaimed that she never wanted to rely on a man to take care of her again.⁷⁴ This was a small and non-representative sample, but it did offer some evidence that, at least for women in their older years, a desire to avoid gender-based relationship inequality was a motivating factor in their decision to live apart. Beyond these two sources, one must search the popular press for any information about LATs in the U.S. One lengthy article in the *New York Times* in 2006 was based on interviews with LATs.⁷⁵ Three of the women interviewed, aged 39, 46, and 47, mentioned responsibilities to children from previous marriages as one of the reasons they lived apart; none of the men did.⁷⁶ Two of the women were also very direct about wanting to avoid demands they had experienced in their previous marriages, one whose husband had expected to be waited on and another who told of a suffocating marriage with a demanding husband; each of them positively enjoyed the distance and freedom of their current LAT relationships.⁷⁷

B. New Survey Data

To gather more data about LATs, I submitted a series of questions,

⁷¹ Benson & Coleman, *supra* note 6, at 800.

⁷² *Id.* at 808.

⁷³ *Id.* at 805.

⁷⁴ *Id.*

⁷⁵ Jill Brooke, *Home Alone Together*, N.Y. TIMES, May 4, 2006, sec. F, at 1 (also republished in the ORLANDO SENTINEL, May 14, 2006, sec. HOMES). See also Manisha Krishnan, *Living Apart, Together*, MACLEANS MAGAZINE, Sept. 17, 2013 (discussing older LATs in Canada and women's desire to be free of traditional domestic roles they had experienced in the past).

⁷⁶ *Id.*

⁷⁷ *Id.*

modelled on those in the British Social Attitudes Survey, to be included in two surveys run by the Cornell University Survey Research Center in 2016 – the Empire State Poll (ESP), a random sample of 800 respondents in New York State, and the Cornell National Social Survey (CNSS), a nationally representative sample of 1,000 respondents in the continental United States.⁷⁸ About 9% of the respondents to the national poll and 12% of those to the New York State survey reported that they were LATs, for a total of 93 nationally and 103 in New York. The numbers are not precisely comparable, however, because of ambiguity on the initial screening question posed in New York, which resulted in ten respondents there who lived apart but were in fact married. Total unmarried LATs on the two polls would thus be 186. They included persons in both same-sex and different-sex couples, with those in same-sex couples making up 4% of all LATs on the national poll and 11% in New York. The periods they had been together varied from less than six months to more than ten years, with 60% of those in New York having been together more than two years and 17% more than ten years; nationally, 47% had been together for two years or more and 10% for ten years or more. More than 50% lived within 10 miles of one another, and the vast majority saw one another in person daily or weekly, with frequent phone, text, or email communications in between.⁷⁹

In this article, I examine the data produced by these surveys under the lens of gender, asking whether women and men are attracted to LAT for different reasons, whether their reasons relate to inequitable division of labor between men and women, whether financial independence is a significant factor to them, and the like. What, if any, are the gendered dimensions of the data produced by the two surveys? And how, if at all, does it differ from the theses about gender propounded in the secondary literature thus far?

The LATs responding to the New York State survey consisted of 50 men and 53 women (49%/51%); those responding to the national survey were more lopsidedly male, perhaps because of the nature of a random survey or perhaps because the lifestyle appeals more to gay males: 51 men and 42 women (55%/45%). (Total respondents to the two surveys, not just LATs, were 51% male and 49% female.) The duration of their relationships showed no difference by gender.

⁷⁸ Data was collected by telephone, both cellular and land line; the ESP data between February 9, 2016 and April 19, 2016, and the CNSS data between September 19, 2016 and December 13, 2016. Datasets from the CNSS are available at <https://cisermgmt.cornell.edu/cnss/>. Despite the omission of Alaska and Hawaii from the CNSS, the data from that survey will be labelled “national” herein.

⁷⁹ More information about the general survey results, including demographic characteristics of the respondents can be found in Bowman, *supra* note 3, at 344-49.

Similarly, as shown in Table 1, male and female LATs showed no significant difference in age, apart from the fact that there were more males than females in the national sample in the group aged 18 to 24:

Table 1. Distribution of LATs by Age and Gender in NY and U.S.⁸⁰

Age	NY				U.S.			
	LATs #		Percent by gender		LATs #		Percent by gender	
	M	F	M	F	M	F	M	F
18-24	10	14	20	26	18	9	35	21
22-34	14	8	28	15	14	11	27	26
35-44	4	12	8	23	5	6	10	14
45-54	13	11	26	21	6	9	12	21
55-64	6	5	12	9	4	3	8	7
65+	3	3	6	6	4	4	8	10

If one defines the group of older LATs as those aged 55 and above, the proportion of males to females was roughly equal in this group; about 17% of those in New York State (17 of the 103 total) and 16% of those nationally (15 of the 93 total) fell into this age group. Most of the LATs, however, male or female, were in the middle age grouping, that is, between the ages of 25 and 55.

The majority of LATs on both surveys were White, but Hispanics were overrepresented compared to their numbers in the survey population overall.⁸¹ There were no significant correlations between gender and race, with one exception: Black women LATs outnumbered Black men LATs by almost two to one. A plausible explanation for this disparity may be the mass incarceration of Black men, which would explain both the unusually high rates of living apart (involuntarily) and the gender imbalance, as incarcerated men cannot be surveyed by telephone.

Cross-tabulating household income of LATs with gender showed that the women in these relationships tended to be poorer than the men, as shown in Table 2; this is not surprising given that men still make

⁸⁰ All percentages in the tables and text have been rounded to the nearest whole number.

⁸¹ In New York and nationally, 76% of the LAT respondents were White. Hispanics made up 19% of the LATs both in New York and nationally, compared to 13% of the New York respondents overall and 9% of the overall survey respondents nationally. *See* Bowman, *supra* note 3, at 347 (Table 5).

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more, on average, than women.⁸²

Table 2. Distribution of LATs by Income and Gender in NY and U.S.

Income	NY				U.S.			
	LATs #		Percent by gender		LATs #		Percent by gender	
	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>
<\$10,000	2	7	4	13	0	4	0	10
\$10,000-19,999	3	2	6	4	3	5	6	13
\$20,000-29,999	2	7	4	13	5	3	10	8
\$30,000-39,999	7	2	15	4	2	6	4	15
\$40,000-49,000	7	5	15	10	6	3	12	8
\$50,000-74,900	9	11	19	21	16	11	31	28
\$75,000-99,999	6	10	13	19	8	3	16	8
\$100,000-149,999	10	7	21	13	5	3	10	8
\$150,000+	1	1	2	2	6	2	12	5

These statistics also show that LATs are found across the income spectrum. However, assuming that an annual household income of \$50,000 and above is a middle- to upper-income level,⁸³ the majority of LATs appeared to be economically comfortable. Nationally, however, there were substantially more males (35) than females (19) in this group. In sum, women were likely to be the poorer partner in these relationships, with all the implications about possible power differentials that were seen as important in some of the studies described in Part I above. The data available in these surveys of most relevance to gender issues is that about LATs' reasons for living apart, their expectations for physical caretaking, and methods of cost-sharing, because these are all central to the nature and meaning of LAT as a family-like institution. Duncan placed particular importance on the fact that men and women did not appear to differ in their reasons for LAT,

⁸² In 2016, women's median weekly earnings for full-time work in the United States were \$749, while men earned \$915 per week. *The Gender Wage Gap: 2016*, INSTITUTE FOR WOMEN'S POLICY RESEARCH (Mar. 2017), <https://iwpr.org/wp-content/uploads/2017/03/C454.pdf>.

⁸³ The national median household income in 2015, as calculated by the Census Bureau, was \$55,775. *Income in the Past 12 Months (in 2015 Inflation-Adjusted Dollars)*, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/S1901/0100000US (last visited Jan. 29, 2017).

and my survey results, set out in Table 3, agree with his conclusion.

Table 3. Primary Reason Why LATs Live Apart by Gender in NY and U.S.

Primary Reason	NY				U.S.			
	LATs #		Percent by gender		LATs #		Percent by gender	
	M	F	M	F	M	F	M	F
Too early	11	8	22	16	12	9	24	21
Job-related	11	4	22	8	7	6	14	14
Study-related	2	10	4	20	3	4	6	10
Children	3	4	6	8	4	0	8	0
Other responsibilities	4	7	8	14	4	2	8	5
Keep own home	5	5	10	10	5	2	10	5
Prefer to live apart	14	13	28	25	6	8	12	19
Other reasons ⁸⁴					10	11	20	26

A few observations about this data are in order. First, it is surprising that not a single woman on the national survey cited children as a primary reason for living separately. Questions about reasons related to work, study, and children referred to either the respondent or the respondent's partner, so the men citing children as a reason might be referring to the presence of their partner's children in her home as a reason to maintain separate residences. Nonetheless, the failure of a single woman to refer to children on the national survey and the 8% who did so in New York seem low, particularly in light of Strohm et al.'s finding that 45% of women LATs live with children.⁸⁵ The option "other responsibilities" included a parenthetical giving "caring for an elderly relative" as a possible reason, and women on the New York survey were more likely than men to select that option, which could include other responsibilities not contemplated as well. Moreover, the catchall option offered on the national survey – "other reasons" – attracted a large number of responses, second only to "too early," suggesting that an open-ended "what are they?" question should be included in future research. My qualitative interviews indicate that differing styles of messiness or clutter versus tidiness should definitely

⁸⁴ "Other reasons" was not included as an option on the NY survey.

⁸⁵ Strohm et al., *supra* note 3, at 191. The prominence of children in the home as the main reason given by LATs in popular press articles is also striking. See Brooke, *supra* note 75, at F1.

be one option offered.

Notwithstanding these shortcomings, one can still reach a couple of conclusions based on the data concerning the reasons LATs gave for living apart. First, their reasons did not differ markedly by gender. Instead, reasons given by both groups correlated with age, with those saying it was “too early” clustered in the age group from 18 to 34, for example. However, those giving reasons based on preference were arrayed across all age groups. Second, men and women fell in roughly equal numbers into the two categories of response that can be deemed unconstrained by external causes: “want to keep own home for other reasons” and “by preference.”⁸⁶ This group can be characterized as LATs by choice and amounted to a not insignificant number of LATs, constituting 36% of the total in New York State and 23% nationally.

One question on the survey did elicit some interesting gendered responses, however – that which asked about who the respondents thought most likely to care for them if they were ill; the results are set out in Table 4.

Table 4. Person Most likely to Care for You if Ill:
LATs: NY and U.S.

Person	NY				U.S.			
	LATs #		Percent by gender		LATs #		Percent by gender	
	M	F	M	F	M	F	M	F
Someone live with	3	5	6	9	7	2	14	5
Partner	17	11	34	21	12	10	24	24
Family member	19	32	38	60	25	25	49	60
Friend	1	0	2	0	3	3	6	7
Other	2	2	4	4	4	2	8	5
Not know	8	3	16	6	0	0	0	0

Most LATs looked either to their partners or to family for care during an illness. This is consonant with responses on a large-scale survey of LATs in the U.K.⁸⁷ However, although both women and men

⁸⁶ Cross-tabulating reasons to live apart with age reveals that those who gave “too early” as their reason clustered in the age group from 18 to 34 and those citing study were only in the 18 to 24 group. See Bowman, *supra* note 3, at 251 (Table 10).

⁸⁷ Duncan et al., *supra* note 9, at 7-8.

on both U.S. surveys predicted that a family member was more likely than a partner to care for them in case of physical illness, women were more, and more consistently, convinced that they would need to turn to family rather than to their partner for caretaking; the gender difference was greatest on the New York State survey.

What are possible explanations for this difference by gender in expectations about future caretaking? First, women know that caretaking is an activity typically gendered female; they are likely to have undertaken it themselves or seen their mothers do so; and they know what a heavy burden it involves. This may explain their diminished expectations of care from their partners as compared to the male LATs. In addition, men and women may mean different people when they say a member of their family would look after them; this likely differs by age as well. Younger LATs may assume that their family of origin (or more specifically their mothers) will take care of them in case of illness, while older LATs may have lost the members of the previous generation able to care for them and thus look only to their children for care. Because women remain the primary caretakers of children, they may feel closer to them and more confident about their children's feelings of obligation towards them.

Another gender difference in response, at least in New York State, was that men were more likely than women to say that they did not know who would look after them in case of disability. There are several possible explanations for this difference. First, men may simply not think about caretaking tasks in advance of need, while women are socialized to do so. Second, men may not like to think about being vulnerable at all and thus not look ahead to that inevitability, while women have multiple experiences of vulnerability during their lives, for example, surrounding childbirth. Third, men may simply not be sure who would come through for them.

Turning to economic issues, the vast majority of LATs – 76% of men and 83% of women – said that their partner would help them with a gift or loan if they were in financial difficulty. Statistically, the partner in financial difficulty is likelier to be the woman than the man. Moreover, there is some support in my data for gender differences in the ways male and female LATs share costs. The genders differed somewhat on the national poll in how they described the methods by which they shared costs for joint activities such as eating out, entertainment, vacations, and other expenses undertaken as a couple, as set out in Table 5.⁸⁸

⁸⁸ This question, breaking down cost-sharing into different methods, was only asked on the CNSS, after responses to the ESP suggested its desirability

Table 5. Cost Sharing Methods in U.S. LAT Couples by Gender

Method	# of LATs		Percent by gender	
	M	F	M	F
Strict 50/50	8	4	21	12
Ability to pay	7	6	18	18
Alternate paying	18	21	46	64
Common pot	3	1	8	3
Other	3	1	8	3

The first thing to note is that a common pot, such as some married couples and cohabitants maintain, especially if they have children,⁸⁹ was the rarest method of sharing expenses. The most common method was to alternate paying for them, a method that presumably yields rough equality over time but involves much more trust than a strict accounting. Women were more likely than men to say this was their method of cost-sharing, while twice as many men as women (though significantly fewer of both) said they adhered to a strict 50/50 division. One other gender difference was significant: all four of the respondents who said they used an “other” method of sharing costs, when pressed to explain, responded that the male partner paid for everything.⁹⁰ In short, although both LAT partners were self-sufficient economically, when they were together the man paid for all their activities, whether hot dogs at the ballpark or a Caribbean cruise. This may also reflect ability to pay, that is, that the couples’ activities were beyond the financial ability of the partner whose income was lower, typically the woman.

To summarize, with respect to gender, this is what we know from the two Cornell surveys: There were no significant differences in the duration of men’s and women’s LAT unions. Male and female LATs did not differ in age except that there were more men in the 18- to 24-year-old group nationally. Most fell between the ages of 25 and 55. Black women substantially outnumbered Black men among the LATs surveyed. Women LATs had lower income on average than men LATs and were thus presumably the more economically vulnerable member of

⁸⁹ See Carolyn Vogler et al., *Managing Money in New Heterosexual Forms of Intimate Relationships*, 37 J. SOCIO-ECONOMICS 552, 567 (Table 11) (2008) (married respondents and cohabiting parents use a joint pooling system); Kristen R. Heimdal & Sharon K. Houseknecht, *Cohabiting and Married Couples’ Income Organization: Approaches in Sweden and the United States*, 65 J. MARRIAGE & FAM. 525, 533 (2003) (a majority of both married and cohabiting couples in the U.S. and Sweden maintain joint finances).

⁹⁰ Bowman, *supra* note 3, at 353.

most LAT couples. Men and women did not differ in their reasons for living apart, and equal numbers did so by preference. Women LATs were more likely than men LATs to look to a family member rather than their partner for care in illness and to have thought about what they would do in advance. Finally, fewer women LATs than men reported a strict 50/50 method of cost-sharing, and in a small number of different-sex couples, the man paid 100% of the costs of the LATs' joint activities.

C. Qualitative Interviews

I turn now to the results of the interviews of LATs I carried out in the U.S. in 2016 and in the U.K. in early 2017. Interviewees were recruited by the snowballing method; that is, I began by asking colleagues and friends in Ithaca, New York, and New York City, as well as in the U.K. while on leave there in early 2017, whether they knew any unmarried couples who lived in separate residences and then asked those interviewed if they knew others. After obtaining names I sent emails asking whether each partner would be willing to be interviewed, and most but not all agreed. I carried out a total of 20 interviews, 13 with women LATs (four of whom were in two lesbian couples) and seven with male LATs, one of whom was gay. All were White, with the exception of one Black male. Almost every interview was accompanied by an interview of the LAT's partner as well. The women I interviewed were very well educated, including at least three Ph.D.'s, and work had been a high priority in their lives.

My interest in the qualitative research was neither to interview a representative sample nor to contrast the experience of LATs in the U.S. and U.K., and in fact I noted no differences between the two settings. Rather, I wanted to obtain a thicker description of living as a LAT and of people who found it an attractive lifestyle, as well as an in-depth understanding of their motivations and manner of interaction. One might describe my method as purposive judgment sampling.

I was particularly interested in people who had lengthy experience of living as a LAT, and thus the group of interviewees were older than those in the survey sample. Their ages ranged from 44 to 83, with an average of 66 for the women and 69 for the men. Because of the lengthy duration of most of their unions (from 1.5 to 39 years, with an average of 20 years for women and 16 for men), the majority of the LATs interviewed had entered their current living arrangement when they were in their 40s or younger. The distance between the partners ranged from several city blocks to 2,000 miles, but only one couple lived such a long-distance apart; all the rest lived in the same city or

town, with the exception of one couple 84 miles apart. The most common arrangement was one in which the two spent weekends, holidays, and vacations together and communicated daily by email or phone between visits; the long-distance LATs saw one another in person less frequently. One couple spent four or five nights a week together, but this was unusual. It was common, however, for couples to see one another at least once in between weekend visits.

All the people I interviewed were very committed to their partners and to their lifestyle and most did not contemplate living together in the future unless constrained to do so by poverty or illness in old age. One couple had in fact lived together in the past but moved apart by agreement as one partner established a second residence; this had reduced conflict and both partners remained committed to one another and satisfied with the arrangement. None of the persons interviewed said that he or she was dissatisfied with LAT.⁹¹ With two exceptions, the women did not express any sentiment, such as Duncan described, that living apart was “second best.”⁹² Most of the women were adamant that they would never marry; indeed, many expressed open hostility to marriage as an institution.

Except for the two long-distance couples, who were constrained by work and family in different locations, all of the LATs interviewed could have moved in together but chose not to. This common front may have had something to do with their age and the longevity of most of their relationships; some had discussed living together early in their relationship but rejected the idea and were pleased with how it had worked out.⁹³ In only one different-sex couple did both partners have children who were not yet adult, and both cited that as their primary reason for living apart. However, even if those children moved out of the home in the future, the partners each had jobs that were important to them in different towns. Moreover, one partner said that even if they moved to the same place, they might live apart, at least initially, because they each enjoyed it. In short, my results conflicted with Duncan’s conclusion that only a minority of women choose LAT for genuinely unconstrained reasons. The vast majority of those I interviewed either selected LAT as a first choice initially or after experimenting with it

⁹¹ One of the partners in one couple predicted that that they would eventually live together or break up. Also, both partners in one long-distance couple thought they might eventually live together but were now separated by the needs of both children and jobs in different towns.

⁹² Duncan, *supra* note 55, at 601.

⁹³ Their universal satisfaction with LAT may also reflect the selectivity of my sample. A few individuals I approached turned down my request for an interview, because they didn’t want to talk publicly about their relationship or “it wasn’t a good time.” Some of these may have been more ambivalent about living apart than those who were willing to speak openly about their private life.

found that it was the option they preferred above all others.

A number of common themes recurred in the interviews, especially in response to questions about why the couple lived apart. The most common one mentioned by women was “independence” (or “freedom”). A total of six women and two males spontaneously and explicitly used these terms. The following quotations from three women, one of whom was in a lesbian couple, illustrate:

“For me, it has to do with having my own identity and independence.”

“Our independent natures. Having our own spaces as we want them and are comfortable with them is important to our daily comfort.”

“Having distance... meant I could have my independence, my home, my own routine for me and the boys, and time with him is special.”

By contrast, none of the men interviewed who were in different-sex relationships referred to independence as their primary reason for living apart. This is interesting, given the traditional wisdom about men being more inclined to independence than women. Various scholars have argued that women are in general more oriented than men to relationships and see life as a web of interdependence rather than a quest for autonomy.⁹⁴ I would argue that the spontaneous use of the term “independence” by women is thus unusual and as a result more meaningful. What is it they are touting their independence from?

The answer to this question has much to do both with societal expectations and experiences in prior relationships. Eight of the women were divorced,⁹⁵ and one was a widow. Their experience in previous marriages was key to their choice to live separately from their partners now:

“I felt hemmed in psychologically when I was married.”

“It was an outgrowth of having been married to someone with a very dominant personality, as did his family. I took a back seat..., felt like I lost my identity, or didn’t assert it.”

“When I get into a relationship, I end up doing what the man wants,

⁹⁴ See, e.g., Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 14-28 (1989); CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT 156, 170 (1982).

⁹⁵ This includes two lesbians who had been married to men in the past. One unexpected result of my interviews was the finding that four of the LATs were not divorced from their previous partners, although in some cases they had been definitively separated for as long as 24 years; the failure to regularize the legal situation was typically for financial reasons, concerning insurance or shared property. In one case, the LAT simply could not afford the legal proceedings to get divorced.

even though I'm a strong independent woman. So it's been fun to be in a committed relationship but have freedom... I had a very gendered division of labor with my husband... He was very male and he took care of male stuff and I did inside stuff. He made decisions, controlled the money...."

By contrast, only one man mentioned his prior relationship as having an impact on his choice to LAT. But his experience was not one that led him to avoid cohabitation because of fear of the consequences for himself; rather, he described a painful divorce that had shaken his sense of himself as having the capacity to live with someone successfully.

Duncan classified experience in a prior relationship as a kind of constraint (or vulnerability), that is, he characterized a woman's decision to live apart as not a wholly voluntary choice if motivated by a negative experience in a previous relationship.⁹⁶ I disagree, so long as the previous experience was not one of violence. Loss of identity or a gendered division of labor are quite different. The women in my study had chosen a new living arrangement so as to maximize their ability to be and do what they pleased and to avoid doing cooking, cleaning, and other domestic tasks for their partner. This was a positive choice on their parts, not a reflection on their new partners or the current division of labor between them. The male partners I interviewed were as, if not more, likely to do the cooking than the women when these couples ate together.⁹⁷ The women also avoided having to pick up after a messier partner or do his laundry and cleaning by simply having separate quarters, even though this meant the duplication of many chores at two different residences. Interestingly, the messiness/neatness divide did not fall along gender lines. Almost equal numbers of male and female LATs (three women and two men) said they could not tolerate their partner's clutter or messiness; two women always went to the man's home, and two other couples always spent their time together in the woman's place as a result. For a variety of reasons, it was extremely rare for any couple to alternate between the two partners' residences on an equal basis.⁹⁸

In response to the question "What do you like about it [LAT]?", one woman summarized sentiments expressed by many:

⁹⁶ See Duncan, *supra* note 55, at 599-601 (referring to those who were reacting to past experiences of cohabitation as "vulnerable" rather than "strategic," which he reserved for those who were acting purposefully and who particularly valued individual autonomy).

⁹⁷ Among the different-sex couples, there was only one in which the woman always did the cooking and three in which the man cooked; in the remainder, both cooked, usually together. The lesbian couples split between one in which one partner cooked and one in which they both did. The gay male always cooked for his partner.

⁹⁸ In the case of two couples, this had to do with the presence of dogs or cats in the home.

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“Not having to accommodate someone else in terms of how I live, how I put things away, load the dishwasher. A feeling of freedom; I can have friends over with no one there, clean when I want or not. Silence when I want, feeling like I’m not dependent on anybody, can support myself and my home.”

These themes – having time for oneself, for friends on one’s own, for one’s own interests – figured in virtually every woman’s account. All of this is possible, of course, in a co-residential relationship as well, but more difficult to arrange, especially in areas, such as New York City, where homes are small. Having separate homes and limiting the relationship in terms of time as well as geography makes it much easier.

Another common theme was that it was more possible to keep the romance alive in the relationship when you didn’t see one another 24/7 and share all the details of everyday life.

“It’s very romantic... Long distance fuels the romance; we can’t wait to see each other again versus being there every morning and talking about what we are having for dinner.”

“It stops the sexual relationship from getting stale, routine.”

“Having space allows you to be able to see the other person better and appreciate them in important ways that you might lose sight of if they were always there.”

Turning to economics, all of the LATs interviewed were financially self-sufficient; none paid for their partner’s living expenses. Many were relatively equal in economic circumstances. In several couples, however, one partner was much better off than the other, but four out of five of these couples involved a woman who had more income and/or assets than her male partner. Short-term (“bridge” or “cash flow”) loans and other forms of temporary financial assistance were not uncommon between partners. Each of the lesbian couples and one of the different-sex couples also co-owned real estate of some sort together, in one case a vacation cottage, in another a workshop and a camper van, and in yet another a home bought in the name of one partner with contribution from the other, where the one lived and the two also ran an Airbnb out of it together.

Methods of sharing costs for joint activities, such as dinners out and vacations, varied. In four couples, one partner paid all the costs of any major items (airfares, hotels, restaurant meals, and the like); all of these were different-sex couples. However, unlike the survey respondents and contrary to expectation, in three of the four couples the

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partner bearing the full expense of joint activities was the woman. In each of these cases, the woman had superior assets and her partner might not, or could not, have undertaken such expenses on his own. However, all the women interviewed described a fairly relaxed style of cost-sharing, a loose 50/50 or simple alternation:

“One or the other picks up the tab; we don’t keep track.”

“We alternate with expenses so over time it works out. Just spontaneous, never kept track of it; neither feels cheated.”

“We keep our money separate though we are very generous with one another. No joint account; it balances out, one person buys groceries, or if out to eat, conscious turn taking. On vacations, we alternate days of paying for everything. Dinners out? We don’t keep tabs but try to alternate. We have a kind of generosity of spirit around money.”

In a few couples, the man, according to his partner, always paid for dinners out, or “date night,” while they split more major expenses, like airfares and vacations; but the male partner described the arrangement to me as 50/50. This difference in perception may help explain the gender disparity in the responses to the survey described above, that is, the male partner may in fact perceive alternating as being 50/50.⁹⁹

Moreover, fully 11 of the 20 LATs interviewed – eight women and three men – had made provision for their partners in their wills; for most of the women, her partner was the primary beneficiary. Two more women indicated that they knew they needed to make wills but hadn’t yet done so; they said they intended to leave everything to their partner when they did. If the testator had no children from a prior marriage or other obligations, he or she left as much as all their assets to the partner, and in other cases at least a substantial portion. The cases in which no provision at all was made for the partner involved situations where the testator had children and grandchildren and the partner was well able to provide for him or herself or much better off than her partner. The number of women who had made wills leaving substantial amounts to their partners, or who intended to do so, was high – eight out of 13 women interviewed, or 62% – higher proportionally than the male LATs who had done so (three out of seven, or 43%).

Finally, in contrast to the doubts expressed by survey participants responding to abstract questions about who would care for them in case of illness, the LATs interviewed had in fact taken care of each other

⁹⁹ See Bowman, *supra* note 3 at 356.

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whenever necessary. Those who were younger or had never encountered ill health still had visited, brought meals, and shopped when their partners had the flu. Older ones had seen one another through major illnesses and operations, in some cases moving in with the partner for weeks at a time for caregiving in the aftermath of major surgeries. This had occurred in a total of seven couples: in three of those couples, the male partner had been the caregiver to the woman; and in four couples, each partner had rendered major caregiving services to the other. All of the LATs interviewed relied primarily on their partners for emotional support, would talk to them about problems that upset them, and go to them for physical comfort and solace.

So – what differences appeared in the interview responses from the survey results?

First, it is important to recall that the group of those interviewed differed from the survey sample in various ways – they were older, better educated, and their unions had lasted longer. Bearing those differences in mind, I will discuss contrasts between the two groups with respect to the three questions central to conclusions about LAT as a possible new family form: (1) their reasons for living apart; (2) their economic relationships with one another; and (3) inter-partner caretaking.

While a minority of the LATs surveyed lived apart by preference, the vast majority of those I interviewed said that they did so by choice and not as a second-best alternative to some form of co-residential relationship. Nonetheless, 10% did cite children as the primary reason for living apart, versus 6% to 8% of those surveyed. The two interviewees included one woman and one man in the same couple, each concerned for his or her own children from a former relationship who still lived at home, so the result was not gendered. Although three other women and one other man also had children, they were all adults and no longer lived at the family home.

A number of differences appeared between those surveyed and those interviewed with respect to economics. First, most of the women interviewed were either equal to or better off than their male partners, contrary to the statistics produced by the surveys, which predicted that women would be the less well-off partner in LAT couples. In those couples in which there was a disparity, in four out of five cases the woman interviewed had more money than her partner. Second, cost-sharing described by the interviewees was very relaxed, with little 50/50 accounting such as indicated on the survey. Loans were common and co-ownership not unusual among the LATs interviewed, in contrast to the picture of strict financial independence emerging from the surveys. Third, a large proportion of the women LATs interviewed intended to

leave all or substantial portions of their assets to their LAT partner upon death – 62% of the women versus 43% of the men – a sharp distinction from the 19% of the LATs responding to the national survey who had made any provision at all for their partner in case of their death. The older age of the interviewees does not explain this difference, because providing for one's partner in case of death did not correlate with age on the national survey; indeed, those in midlife were the most likely to have done so. In short, the interviews gave a picture of LATs as more economically interdependent than expected from the survey data.

Finally, there was a stark difference between what the LATs surveyed expected in terms of caretaking if they were ill – that is, that family members would be more likely to look after them than their partners – and the actual caretaking experience of the LATs interviewed, who had given major physical care to one another in such situations.¹⁰⁰ The difference between my survey and interview results may reflect the more advanced age of the interviewees, many of whom had already encountered the health problems common in older years and, if their parents were still alive, were more likely to be taking care of them than vice versa. Moreover, there did not appear to be any gender difference in caretaking; male LATs had taken care of their female partners about as often as the reverse.

In sum, several conclusions can be drawn from my interviews. First, LAT was clearly a lifestyle of preference for those interviewed, especially women, because it answered their needs for independence and avoided problems that may accompany cohabitation. Second, LATs interviewed displayed considerable economic interdependence despite each partner remaining financially self-sufficient. Third, these couples in fact relied upon one another for substantial physical and emotional caregiving, contrary to the expectations expressed by the subjects responding to the surveys.

III. CONCLUSIONS AND IMPLICATIONS FOR THE LAW

Before exploring the legal implications of my research, a quick survey of the ways in which my data confirm or disconfirm the findings in the previous secondary literature about LAT and women is in order. First, my qualitative research clearly confirms a number of findings in the literature. A number of my female interviewees, like those studied

¹⁰⁰ One other study reported a similar disparity between expectations and actual experience of care, reporting that all but one LAT did in fact provide care and that the barrier was not so much the offer as the acceptance of care. *See* Gierveld, *supra* note 7, at 359-62.

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by Funk and Kobayashi,¹⁰¹ pointed to a strong desire to protect their own identity, or sense of self, which had been lost in previous relationships. As Karlsson and Borell noted,¹⁰² they also chose LAT in order to maintain their networks of family and friends without interference. They did so also in the interest of protecting their own pursuits, whether birdwatching, practicing the piano, or keeping pet animals – but so did men. Many mentioned that LAT allowed them to keep the romance alive in their relationships by avoiding conflicts common in every day co-residential life. Funk and Kobayashi, writing about Canadians, and Or, writing about Israeli women, saw this as creating Giddens' pure relationship;¹⁰³ and one of the women I interviewed gave evidence of this without being aware of the intellectual underpinnings: "It's all about us, our relationship, not about keeping a home, family, kids. Just me and him."

Many authors have noted that previous relationships, especially divorce, can play a significant role in attraction to LAT.¹⁰⁴ Karlsson and Borell's article and that by Or both emphasized, as a motivation to live apart, women's desire to avoid an unequal division of labor after a negative experience in past relationships, even though they reported that the women they studied tended to repeat a traditional division of labor in their new LAT relationships.¹⁰⁵ My research does not clearly confirm the impact of divorce, however, as causing an ex-spouse to choose LAT to avoid an unequal division of labor and preserve economic autonomy in the present. Some of the women I interviewed had had bad experiences in this respect in previous relationships, but they did not mention this as a reason to live apart; and the division of domestic labor was not an issue in their current LAT relationships, which appeared by and large to be highly egalitarian. In short, they were not in fact avoiding an unequal division of labor by living apart in the present. Perhaps the previous experience influenced their choice of new partners instead of the lifestyle. Their caretaking behavior, moreover, did not display any replication of traditional gender roles or a drive to avoid taking care of their partners, as Benson and Coleman suggested.¹⁰⁶

Many authors emphasized the economic impact of divorce and the resultant desire on the part of women LATs to be independent with respect to money and to control their financial choices.¹⁰⁷ There was

¹⁰¹ See Funk & Kobayashi, *supra* note 46, at 1107-08.

¹⁰² See Karlsson & Borell, *supra* note 17, at 82.

¹⁰³ See Funk & Kobayashi, *supra* note 46, at 1119; Or, *supra* note 30, at 53-54. On Giddens' pure relationship, see *supra*, text accompanying note 39.

¹⁰⁴ See Karlsson & Borell, *supra* note 17, at 77; Or, *supra* note 30, at 46.

¹⁰⁵ See Karlsson & Borell, *supra* note 13, at 18-19; Or, *supra* note 30, at 48.

¹⁰⁶ See Benson & Coleman, *supra* note 6, at 808.

¹⁰⁷ See Or, *supra* note 30, at 47; Lyssens-Danneboom & Mortelmans, *supra* note 8, at 959-60;

some support for this in my interviews. One woman had refused to take money from her partner when he offered to help her pay off substantial debts, explaining that she'd prefer to rely either on herself or her family rather than burden him. One woman stated firmly that she never wanted to support a man again, as she had in her past marriage; but other women LATs were giving substantial support to their partners. The desire to buy things for oneself in the face of the partner's disapproval, reminiscent of a wife needing to ask her husband before making purchases, was voiced by only one woman, and she was in a lesbian couple. Over all, I did not see a gendered relationship to money in my interviews; instead, inter-partner finances were characterized by an ease and generosity on the part of both genders.

Moreover, despite the economic self-sufficiency described in the secondary literature and confirmed by my own survey, my interviews revealed an unexpectedly high level of economic interdependence, including inter-party loans and co-ownership as well as substantial financial provision for LATs in their partners' wills. This may have been the result of the greater length of their relationships. And, contrary to assumptions in the secondary literature that LATs must be relatively well off economically to afford this lifestyle,¹⁰⁸ both my survey results and interviews showed that this lifestyle spanned various income groups, with some LATs barely getting by (albeit with social assistance in the U.K.). Moreover, living apart appeared from my interviews to appeal to women who were relatively well off compared to their male partners.

Does this mean that women are not attracted to LAT because of a desire to avoid an unequal division of domestic labor and economic dependence? The important distinction, I would argue, is between how LATs consciously experience what they are doing and how it is characterized. For example, none of the women I interviewed would have agreed with Upton-Davis that they were engaging in a conscious effort to resist social injustices and systems of oppression that accompany living together and thus involved in some form of political resistance against patriarchy.¹⁰⁹ Although virtually all the interviewees were fairly reflective, feminist, and politically conscious individuals, this was not the lens through which these women viewed their lifestyles. At the same time, they did display a desire, as Upton-Davis proposed,¹¹⁰ to protect themselves against an erosion of their autonomy and to gain more scope for intimacy and emotional connectedness (which is how I

Funk & Koyabashi, *supra* note 46, at 1115.

¹⁰⁸ See *Severing Intimacy*, *supra* note 1, at 34.

¹⁰⁹ *Id.* at 32.

¹¹⁰ See *Severing Intimacy*, *supra* note 1, at 110.

interpret their language about focusing on the relationship, avoiding the struggles of the everyday, and keeping the romance alive). Moreover, without consciously intending to avoid an unequal division of labor and economic dependency – which none of them asserted as a primary motivating factor – these LATs were in fact accomplishing both goals.

Strohm et al. concluded that women who lived apart from their partners were more individualistic and work-oriented than other women, such as those who marry.¹¹¹ This provokes some intriguing ideas. Perhaps LAT provides an ideal relationship for women who are economically secure, who do not need to rely on men to support themselves, and for whom their work is a major and consuming endeavor. This description would characterize most of the women I interviewed. Observing the couples of which they formed one part, what these women got out of LAT was an emotionally supportive partner, who was there for them but did not place demands on them that would interfere with the woman's other pursuits. In some cases, the woman was the stronger partner economically and supported the joint aspects of their common life, but she had access to physical caretaking and emotional support in return. This is not such a bad bargain for the modern career woman.

Given the amount of economic and emotional interdependence as well as caretaking I found, how should the law treat these couples? More particularly, what legal treatment would be best for women LATs? The answer, I think, lies not in an all-or-nothing solution but in providing legal remedies that support the functions these couples provide for each other. For example, LATs provide extensive physical caretaking in the event of a partner's illness, which is a substantial benefit to society. They should be given the legal tools to accomplish this, such as medical and family leave, hospital visitation privileges, and eligibility for coverage under one another's health insurance policies.¹¹² A number of state law tort remedies would also be appropriate to confer on LATs, such as standing to seek damages for negligent or intentional infliction of emotional distress if they witness the tortiously caused injury or death of their partner and for loss of consortium in the event of his or her death. This recommendation is based on the emotional interconnection between these partners, who are the mainstays of one another's lives.

¹¹¹ Strohm et al., *supra* note 3, at 197-98.

¹¹² I am indebted to Jessica Feinberg for this insight. See Jessica R. Feinberg, *The Survival of Nonmarital Relationship Statuses in the Same-Sex Marriage Era: A Proposal*, 87 *TEMPLE L. REV.* 45, 82-86 (2014) (proposing establishment of a system of recognition of adult nonmarital relationships that would include rights related to ability of the partners to care for each other and not those predicated on economic interdependence).

Another situation in which the law might intervene to protect LATs would be if the couple separated and one party suffered relationship-generated economic disadvantage. Given their self-sufficiency, this should be relatively rare. If so, however, implied contracts between LATs should be recognized, on the same terms as they are between cohabitants.¹¹³ That is, if no oral or written contract is available, implied agreements concerning support or sharing of property, based either on the conduct of the parties or equity, should be enforced. Division of jointly acquired property, regardless of which partner's name is on the title, should be handled in this way or according to general equitable principles such as unjust enrichment or constructive trust. Apart from these circumstances, however, the law should not intervene with respect to the economic arrangements of the two parties upon separation. Economic autonomy is important to women LATs. And, if they separate, although the economically weaker party may not be able to engage in the same social activities or holiday travel as before, each will still have his or her own residence and the ability to self-support.

The death of one party would similarly impose a considerable blow upon his or her partner. Because many LATs have children from previous relationships, they should not be one another's heirs under the intestacy laws. The majority I interviewed did have wills, although one can't count on that.¹¹⁴ If they do, or if they have designated their partner as the beneficiary of their pension assets, this transfer should be treated as a non-taxable event, as it is for spouses. Finally, some system of registration of non-coresidential partnerships might be desirable, one that would provide the legal benefits described above at a minimum and others designated by the parties if they so desire.

I asked the LATs I interviewed to tell me what legal remedies they thought they needed. All of the suggestions were made by women. Apart from one woman who suggested – I think facetiously – joint taxation, none brought up legal issues premised upon economic dependence and consequent vulnerability, such as social security survivors' benefits. Instead, their individual suggestions look strikingly like what I have been proposing above. They suggested:

¹¹³ See, e.g., *Marvin v. Marvin*, 18 Cal. 3d 660, 674, 684-85 (1976) (holding that express and implied contracts between cohabitants are enforceable).

¹¹⁴ According to the Gallup poll, only 44% of Americans reported having wills in 2016. Jeffrey M. Jones, *Majority in U.S. Do Not Have a Will*, GALLUP NEWS (May 18, 2016), <http://www.gallup.com/poll/191651/majority-not.aspx>.

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1. Provision of family or compassionate leave to care for a LAT partner,
2. Legally specified entitlement to hospital visitation privileges,
3. Eligibility for coverage under a partner's insurance policy,
4. Legal recognition of implied contracts between LAT partners,
5. Reform of the tax treatment of pension benefits (which are taxed if a LAT or cohabitant is the beneficiary, but not if a spouse is the beneficiary) so as to treat them as a non-taxable event, and
6. Provision of a registration system for those who want to register their partnerships.

It is not as if the law did not already recognize LATs for certain purposes, generally to the detriment of women. For example, in cases brought by an ex-spouse seeking to terminate alimony payments due to cohabitation, courts have been called upon to determine whether a couple is living apart together or cohabiting.¹¹⁵ LAT women have suffered in these cases when courts have determined that their new relationship justified cessation of payments from an ex-spouse.¹¹⁶ While I do not agree that subsequent sexual relationships should provide a reason to terminate alimony under any circumstances,¹¹⁷ I note that courts have been developing the capacity to identify LATs for these purposes, basing their conclusions on the nature of the couple's interactions and degree of economic interdependence.¹¹⁸ If they can do so for these purposes, surely they can do so for others.

CONCLUSION

This article has provided an overview of a new form in which people are living their lives, one that combines independence and intimacy, and has suggested that it may be particularly relevant to women in their quest for equality. My research, following up on findings and conclusions drawn by others, has shown that a substantial minority of Americans have chosen LAT, for a variety of reasons that

¹¹⁵ See, e.g., *In re Marriage of Miller*, 40 N.E.3d 206 (Ill. App. 2015) (developing standard to distinguish LAT from cohabitant in case involving termination of alimony by ex-spouse).

¹¹⁶ See, e.g., *Rehm v. Rehm*, 409 S.E.2d 723 (N.C. App. 1991); *Paul v. Paul*, 60 A.2d 1080 (Del. 2012); *In re Marriage of Herring*, 634 N.E.2d 1168 (Ill. App. 1994); *In re Marriage of Susan*, 856 N.E.2d 1167 (Ill. App. 2006).

¹¹⁷ The basis for alimony should be need generated by reliance upon the marriage or compensation for contributions during it. See, e.g., Ira Mark Ellman, *The Theory of Alimony*, 77 CAL. L. REV. 1. 40-73 (1989).

¹¹⁸ See, e.g., *In re Marriage of Miller*, 40 N.E.3d 206 (Ill. App. 2015).

are typically related to age, and that many prefer it to either cohabitation or marriage. For some women, who are intensely involved in their work lives, raising children from a previous marriage, or both, LAT offers a way to have a physically and emotionally supportive relationship when cohabitation would be difficult. If my interviewees are any indication, LAT partners offer one another a significant amount of caretaking when ill or disabled, especially as they age, and are more economically interdependent than previous studies led me to expect. Based on my findings, I have suggested a number of narrowly-tailored legal reforms in the treatment of couples who live apart from one another; others may be appropriate as well, if they serve the purposes of enabling the couple to care more effectively for one another and to set the terms of their own unique relationship.

An interesting question is posed by Funk and Kobayashi's assertion that LAT is an individual, personal solution that detracts from dealing with continuing inequalities in co-residential relationships.¹¹⁹ They presumably meant this as a negative comment. It is true that LATs, as individuals, have opted out of relationships that are often characterized by unequal divisions of domestic labor, decisional control, and economic power and have gained for themselves both equality and freedom in ways that they may not have been able to achieve in co-residential relationships. It is not so clear, however, that their doing so detracts from dealing with those wider issues as a society. This is not a zero-sum game; one can develop alternative family forms and work to democratize traditional forms at the same time. Indeed, seeing people who live in new and different ways can provide an impetus for change within the older forms; change can be engendered by alternative institutions and models. Describing and analyzing the ways in which LAT works for some women may be a step in that direction.

¹¹⁹ Funk & Kobayashi, *supra* note 46, at 1119.