10-1-2016

Award-Winning Article: Digging up the Radical Roots of Same-Sex Marriage

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But they were significant, argues UB School of Law associate Professor Michael Boucai, because they brought unprecedented attention to the existence and the ideals of gay liberation.

The cases were also the first to frame the question of who should be allowed to marry “not defensively but offensively, in constitutional terms.” That approach—seeking in the Constitution a right to marry regardless of gender—ultimately led to the U.S. Supreme Court’s historic 2015 decision in Obergefell vs. Hodges.

Boucai published a major article last year in the Yale Journal of Law & Humanities, “Glorious Precedents: When Gay Marriage Was Radical,” that told the story of these three groundbreaking cases. Now he has been awarded the prestigious Michael Cunningham Prize, recognizing his article as one of the three best law review articles in 2015 that addressed sexual orientation and gender identity.

The honor is awarded by the Williams Institute at UCLA School of Law, a think tank that conducts research on sexual orientation and gender identity law and public policy. Boucai’s article will be republished in Volume 15 of the institute’s Dukeminier Awards Journal, along with those of his fellow honorees, Associate Professor James M. Oleske Jr. of Lewis & Clark Law School and Clinical Professor Suzanne B. Goldberg of Columbia Law School.

“One obvious distinction,” Boucai writes, “is that these first cases stood no chance of winning. Except in moments of extraordinary bombast or naivety, neither the litigating couples nor their attorneys expected the lawsuits to succeed in any conventional sense. To claim a right to marry a same-sex partner in the early 1970s was necessarily to seek something other than a favorable judgment in court and a license from city hall. What was that something? Where, if not to the altar, were the first gay marriage cases supposed to lead?”

He answers his own question by saying that “marriage litigation in the wake of Stonewall had much more to do with gay liberation generally than with gay marriage specifically,” and that the three cases “deployed the symbolism of marriage to proclaim homosexuality’s equality, legal and moral, in a society that almost ubiquitously criminalized its practice.”

Boucai, who joined the UB law faculty in 2012, has degrees from Yale, the Georgetown University Law Center and the University of Cambridge. His courses include Criminal Law and Family Law, and his scholarship focuses on the legal, political, moral and social norms that regulate sexuality, reproduction and various forms of intimate association.