In Georgia Law’s 105th Sibley Lecture, University of Virginia’s Harrison Distinguished Professor of Law Frederick Schauer explored the question “When and how (if at all) does law constrain official action?”

Schauer suggested that officials comply with the legal system far less than we think. According to him, although Americans claim to live in a country where decisions are highly influenced by the law and courts, the reality may be quite different.

“Across the political spectrum, officials and public figures are politically and reputationally rewarded for doing the right thing even if it violates the law and punished for doing the wrong thing even when the law commands it,” he said.

This idea of philosophical anarchism implies individuals should act on what they believe to be the best moral decision, regardless of illegality.

“Do the right thing, but when you have reached a conclusion about what this is, don’t depart from this view just because the law tells you to,” he said.

Schauer referenced the actions of Roger Toussaint, head of the Transport Workers Union Local 100, who led his workers on strike in support of an ideal even though the strike was in violation of the law. At the time, individuals who were in favor of the strike were unfazed by its illegality.

In spite of potential repercussions, Toussaint said, “There is a calling that is higher than the calling of the law. It is the calling of justice.”

In contrast, Socrates’ belief system led the philosopher to refuse escape from punishment for a crime he did not commit because he believed he had a moral obligation to the law – even when he thought the law had made the wrong decision.

“To obey the law is to do what the law says, just because the law says it – not because it is necessarily right, not because it is what you would do anyway,” Schauer said.

He described an event in 1957 in which President Dwight D. Eisenhower sent troops into Little Rock, Ark., to enforce the ruling in Brown v. Board of Education.

At the time, Eisenhower did not agree with the outcome of this case, yet he still took actions to uphold it.

“Law is interesting and important from the perspective of the subject when it tells the subject to do something different from what he or she would otherwise have done,” Schauer said.

Taking into consideration all arguments, Schauer reached the following hypothesis, “If, as an official, you take an action that turns out to be popularly accepted, no one will care that you have broken the law. If you take an action that turns out worse than you expected, the fact that it is unpopular and illegal will be worse than if it is just unpopular.”

In addition to teaching courses at the University of Virginia, Schauer is the author of more than 200 articles appearing in legal and philosophic journals, and of books on freedom of speech and press, constitutional law and theory, evidence, legal reasoning and the philosophy of law. He is also a founding co-editor of the journal Legal Theory.

– Christina Graff

Watch Schauer’s and Eskridge’s lectures online at www.law.uga.edu/lecture-series.