A practice called tax farming has been traced back at least 4000 years to ancient Mesopotamia. Real farmers raise food from their land. Tax farmers raised revenue from the people who inhabited the lands of some ruler. It is only natural that a practice that has been employed in so many places over 4000 years would show many differences in the particular details by which it operated.

The central idea of tax farming, however, is the same everywhere. A ruler wants to extract revenue from his subjects, and hires someone to do the extraction. Typically a tax farmer would be awarded a monopoly to harvest taxes from a particular area. In many cases a ruler would assign a revenue quota to the tax farmer. A tax farmer who failed to deliver his quota of revenue would be liable for the shortage.

Tax farmers were generally wealthy men who became even wealthier through tax farming. The ruler’s chief concern was to get his desired revenue. If the tax farmer failed to extract sufficient revenue from the people, the ruler could collect the shortage from the tax farmer himself. A ruler would not want to hire a tax farmer who was poor because only a wealthy tax farmer could assure satisfaction of the ruler’s appetite for revenue.

While tax farmers were liable for shortages, tax farming was generally a profitable business. Whatever wealth a tax farmer started with, he could generally add to it nicely through tax farming. Tax farmers who extracted revenues beyond their quotas could keep the difference. Such a tax farmer would not invoke a ruler’s wrath so long as he raised sufficient revenue for the ruler.
From time to time rulers would use such devices as soliciting bids for the right to be a tax farmer, in an effort to increase their share of the tax farmer’s harvest.

It is easy to see that tax farming would leave no room for such civilized niceties as an adherence to a rule of law that frees people from arbitrary taxation. Tax farming is a tool of autocracy, not of democracy. It is not a suitable tool for tax collection in a democracy because over-zealous tax farming can easily trample the rule of law. Even with such tax collection agencies as the Internal Revenue Service, concerns are continually voiced about such things as IRS investigations proceeding under a presumption of guilt rather than innocence. But these investigations are nonetheless softened by the principles of the rule of law, as embodied in various institutions, practices, and doctrines. We are a long way removed from tax farming.

Or are we? It would seem as though a form of tax farming has erupted recently in the United States. It takes the form of lawyers filing class action suits, where the results of those suits replace what otherwise would have required legislation to accomplish. The tobacco settlement is a recent case in point. The major tobacco companies settled a suit with all state governments throughout the land for $246 billion. The revenues are already accruing to the states, and are being used for a wide variety of purposes from A to Z.

The lawyers in this case are modern-day tax farmers. They have used the tobacco companies as a vehicle for collecting taxes on smokers. Instead of state legislatures roughly doubling their tobacco taxes, the lawyers collected the taxes themselves through the tobacco settlement. What makes the analogy with tax
farming complete is that the lawyer-tax farmers were able to keep many billions of dollars for themselves. The majority of the revenue collected by the tax farmers of old went to the rulers. It is the same for our new form of tax farming.

The tobacco settlement is not the first case of modern tax farming and other cases are now in process. Before tobacco, there was asbestos. Since tobacco, there is gun manufacturing. What you have in all cases is a form of tax farming; only the farmers wear suits and work mostly in offices. They find people from whom to extract revenue, and typically focus on the easiest and most lucrative targets, which are those targets whose pockets are thought to be the deepest. The new tax farmers keep a good chunk of the revenue they collect for themselves. The remainder goes to politically favored purposes in one form or another. The tobacco litigation involved the state attorneys general in hiring private law firms, and with many of those firms making contributions to political campaigns on behalf of their sponsors.

Without doubt, the modern tax farmers would say that they are doing well for themselves simply as reasonable compensation for the good work they are doing. Perhaps their compensation is reasonable, and perhaps it isn’t. Perhaps it is good work that they are doing, and perhaps it isn’t. What is beyond dispute, however, is that the democratic embrace of the principle of the rule of law in matters of taxation is being violated in our recent resort to tax farming. If the legislature won’t tax, lawyers shouldn’t do so in their place.