

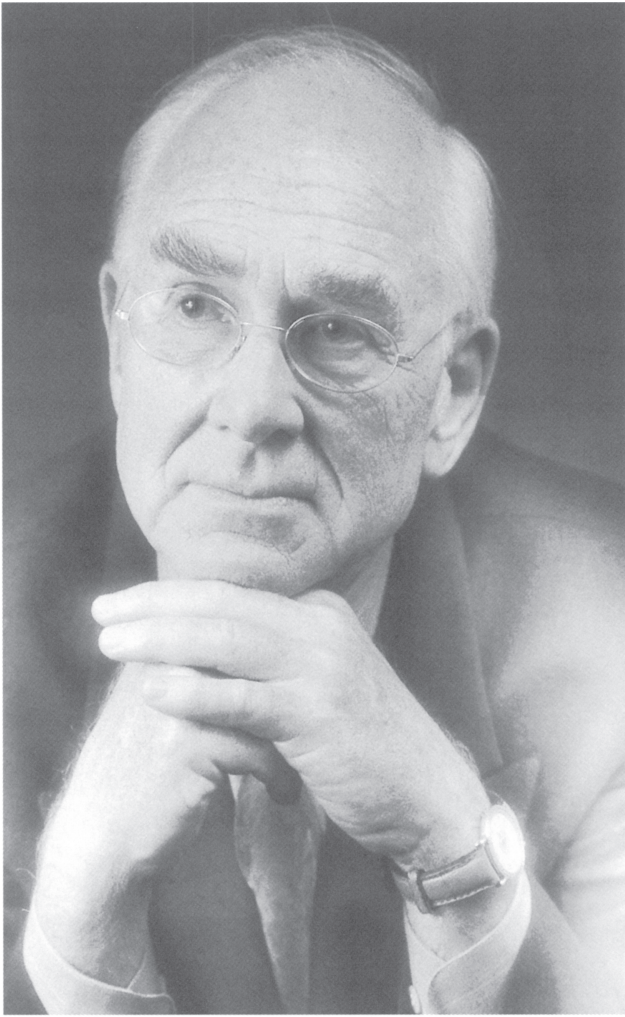


# **Law, Life and the Images of Man**

**Festschrift for Jan M. Broekman**







Jan M. Krochmal

# **Law, Life and the Images of Man**

**Modes of Thought in Modern Legal Theory**

**Festschrift for Jan M. Broekman**

**Edited by**

**Frank Fleerackers, Evert van Leeuwen  
and Bert van Roermund**



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## Preface

This Festschrift in honour of Jan M. Broekman, on the occasion of his 65th birthday, is a tribute to his scholarship. More significantly, it echoes the original and inspiring contribution he made to many debates, both as the professor of philosophy of law and contemporary philosophy at the Catholic University of Leuven (Belgium), and as the professor of philosophy of medicine at the Free University of Amsterdam (The Netherlands).

A short glance at the contents of this volume will suffice to assess that this echo is worldwide and diverse. A closer look at the papers will reveal that they bear testimony to his continuous efforts to confront his students and colleagues with two tantalizing challenges: firstly, to develop their own modes of thought rather than to repeat their master's voice; secondly, to bring philosophical wit to bear on problems of socio-political life, in particular as experienced within the framework of those powerful, often indeed alienating institutions that promise to take care of both personal and communal health.

Over the years, so many have felt the incisive influence of Jan Broekman's creative spirit, that the editors' invitations to contribute met with overwhelming enthusiasm. As could be expected, the initial suggestion to aim at the prism of 'the image of man', a central theme in Broekman's work, generated a colourful spectrum of approaches and arguments. In spite of their impressive variety, the resulting arguments could be grouped rather easily under six headings, which felicitously reflect the most important areas of Broekman's scholarly activity. At the same time, each and every one of them illustrates the celebrators' deeply felt and frequently argued conviction, that categorization is a discursive product rather than a representation of reality. Which is to say that virtually all contributions spring the boundaries of the sections pre-set by the editors.

We would like to thank the contributors for their response to our initiative and for their smooth co-operation in realising it. We regret but understand, that personal circumstances and obligations impeded some of our colleagues to join the enterprise, and that, in only a few cases, technical circumstances, especially limited translating facilities, made it impossible for some to submit a paper.

With sincere gratitude we acknowledge the support and advice received from professors Norbert Simon and Werner Krawietz. We also want to express our appreciation of the efforts made by Duncker & Humblot to transform the Leuven - Amsterdam - Tilburg initiative into a viable project and, indeed, a



book worthy to the philosopher it seeks to honour. Further thanks go to all those who assisted in translating, scanning, correcting and editing texts, and particularly to Karine Draeck, Fabienne Kerstens, Nicole Segers and Klaas Tindemans, without whose tremendous skill and sustained devotion this Festschrift could not have been realised.

The editors

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## **Prologue**



# Events and Discourse in Life

## Hommage to Jan Broekman

Evert van Leeuwen

### I. Introduction

During his eminent career, Jan Broekman has developed many interesting insights in philosophical issues concerning medical discourse. Conceptual issues regarding the concept of disease, epistemological issues concerning the processes of anamnesis and diagnosis and the problematic intertwining of law, ethics and therapy have been thoroughly analysed, especially during the last twenty years at the Free University in Amsterdam.

Notwithstanding the large amount of texts which Jan Broekman wrote throughout these years, gathered by me out of interest and admiration, it is not the texture of his work which is most important in the philosophical analysis. Emphasis on his texts would imply a philosophy *of* medicine, resulting in a philosophical text and interdisciplinary scholarship. Or it would result in a philosophy *on* medicine, which could be of interest to political philosophers and epistemologists. These interpretations would in neither case touch on the main point, namely to establish a philosophy *in* medicine which would identify genuine philosophical questions and debates under the surface of the self-evident practice of healing and caring.

Those questions do not so much refer to philosophical discourse or theory, they belong primarily to the life events which are structured by medical discourse as part of the broader discourse on civil life.

Reading through the texture of medical discourse, Jan Broekman reveals himself as a passionate and compassionate philosopher. He tries to unravel the knots which prevent us from liberating ourselves out of the bonds which tie up our views on life and death. Some of the knots will be discussed here, not in the way of a critical analysis or appraisal, but to stimulate further insights and debates with Jan during the years to come.



## II. Life, Structure and Anthropology

“Consciousness” can be considered as one of the main topics in cultural life after World War II. Within German and French phenomenology consciousness was draped in the philosophical garment of the subject. Freedom and choice became main issues, especially in the work of Merleau-Ponty and Sartre, resulting in an active humanism which considered human life as a project, as a throw against the future of existence. The subject therefore had to resist objectifying reasoning in science and medicine, it had to retain its statute of the untied being.

Parallel to this existentialist movement another stream of thinking developed itself and became known as “structuralism”. In stead of referring to Kant, Husserl and Heidegger, structuralist philosophy borrowed many insights from extra-philosophical fields, such as linguistics, biology, ethnography and art. The uniqueness and authenticity of man as a philosophical subject became highly questionable in the light of cultural, biological and linguistic systems. The intentions and creative efforts of individuals were considered to be transcended by the texture of the systems which absorb them.

Between these two parallel streams of thinking another type of thinking can be discerned in which philosophers try to liberate themselves from ecological and structurological determinism. One of them is Ludwig Klages, one of the first philosophers studied by Broekman. Klages, artist, graphologist, philosopher and psychologist, criticised western philosophy as dominantly logocentric, transforming real, mutual processes of involvement into formal systems of relations.<sup>1</sup> In discussing the views of Klages, Broekman compares the concept of logocentrism with the more recent work of Derrida concluding that the same roots are present. On the background of Broekman’s discussion stands the motto of Dilthey: “Reality is life”. (Die Wirklichkeit is das Leben). With Wittgenstein and Klages, Broekman argues that life itself lies beyond our possibilities to conceive and to analyse. Words like life, enjoyment and life-experience, have no reference to anything outside themselves. Broekman calls them therefore ‘inside-concepts’. The experiences of passion or rapture/ecstasy mean for example that we lose the kind of control over reality which dominates our epistemology and philosophy of consciousness. The control namely which presupposes that we can observe ourselves from outside our life-events. When life grabs us, we loose our ego.<sup>2</sup>

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<sup>1</sup> J.M. Broekman, Vitalisme en structuralisme bij Ludwig Klages. In: *Ludwig Klages. Hestia. A. Krantz-Gross.* (ed). Bouvier Verlag, Bonn, 1974, p.84.

<sup>2</sup> Ibidem, 86.

According to Broekman, Klages has tried to establish a hidden discourse within the two parallel streams of thinking of this century. This interpretation does not surprise his friends. Although not a vitalist, Broekman has aimed at the same goal in many of his philosophical arguments and debates: to find the limits of our language, to read another discourse between the lines of our texts and to look for punctuations in order to experience when real life breaks through the wordings exactly at the point when words have to stop. In his later work on medicine Broekman has often called these ruptures "facts of life" which can only be experienced at the points where medical discourse has to stop. Then a hidden discourse on pain and suffering is able to break through as well as in the metaphors which patients choose to describe their experience of absurdity, hyper reality and breakdown when a bad prognosis is told to them or when undergoing an operation.

The question of how a hidden discourse of life is able to survive within medical discourse can be answered by studying the processes of mimesis and imaging in medical reasoning. Most of clinical and biological science in medicine aims at the constitution of clear images of anatomical, physiological and biological processes. New devices, like MRI and PET-scan, produce new knowledge by means of their images and the relationships which can be studied with other images, for instance those produced by staining cellular tissue. However highly sophisticated the devices, the physician is nevertheless still obliged to put the scientific findings within the uncertain framework given by the actual patient. New pictures arise then of the ways how the patient might feel himself or how she will develop her situation. Apart from the unforeseeable dimensions of the patients life which can influence the course of the disease by giving hope or loosing faith, these pictures have to do with unpredictable events in biological processes, for example of immunisation and of neuroendocrinology. The pictures are therefore flexible in character. They can change over time, are interchangeable with each other and supersede each other in one and the same patient.

The fundamental unpredictability in clinical science and action resists a philosophical account of medicine which tries to combine an anthropological point of view, based on the philosophy of consciousness, with a structural approach, based on a formal conception of relationships. Attempts to realize such a combination have been made by using Bertalanffy's system theory or Von Weiszacker's theory of the whole. In many of them, the anthropological dimension is represented as a metaphysical whole underlying the parts and parcels of scientific reasoning. That whole however is nothing else than a presupposed philosophical subject which acts as a fictitious entity or a mythological picture of the patient's self outside the experience of suffering and disease. In stead of such a mythological kind of thinking, medicine has