

STORY TIM CLARKE

THROW *the* BOOK *at them*

PHOTOGRAPHY IAN MUNRO

Tom Percy has spent his legal career going to bat for people others say are beyond redemption. Now, his new novel explores the good that can dwell inside a bad egg.

For the past 40 years, Tom Percy has been on the side of the devil – or so many would have you believe.

Undoubtedly one of Perth's most recognisable legal luminaries, he has largely made his living by trying to keep people out of prison.

People who the police say are really bad. People who have really bad things said about them by witnesses, and really bad accusations put to them by prosecutors.

Percy's job, as one of Australia's most experienced defence barristers, has been to take those really bad things and turn them around.

Not disprove them. But shine a light on them. Cast doubt on them. Make a judge, or a jury, think twice.

And the one question Percy has always been asked – and always will be – is how?

How can you defend someone as bad as that?

“That is the most common dinner party question for any lawyer, and I'd like \$1 for every time it's been asked,” Percy says.

“The answer is firstly this. I – you – weren't there. You don't know.

“When you ask me about someone: ‘How can you defend them?’ The answer is, well, there's a very real chance that they might not be guilty.”

The next question then, is how? How do you defend someone when there is evidence they have committed a serious crime, a horrible crime?

“You try and evaluate whether or not this person has good aspects to them. And the answer that you arrive at in most cases is yes they do,” Percy says.

“Whether it's better than 50 per cent or not, or they are predominantly a good person, is a matter of judgment. But I would think that in all but the most extreme cases, there are some redeeming features about everyone I've run into in the last 40 years.”

Over the years, having been asked over and over, Percy has found a useful parable to explain this way of approaching his life's work.

It is the fable of the curate's egg – originally a cartoon, drawn by George du Maurier and published by Punch magazine, in 1895.

In the cartoon, a nervous young curate is eating an egg at the esteemed bishop's table.

The bishop expresses concern that the curate has received a bad egg. But the curate, not wishing to trouble or offend his more senior host replies: “Oh, no, my Lord, I assure you that parts of it are excellent!”

The egg is apparently bad. But a young curate, for his own reasons, insists he can find some good.

“I've often thought of the parable . . . as a way of explaining to people who aren't in the legal profession what my experience is,” Percy says.

“People making a mistake, acknowledging it, not getting caught for it. And the dichotomy of someone who hasn't done anything wrong, but is still being charged. The opposite sides of the same coin.

“I thought that ‘The Curate's Egg’ was not a bad title for the sort of issues I wanted to explore – to build a story around someone who was in both of those situations.”

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And so Percy did explore, spending three years in the air and on the ground writing his first novel – a story spinning around the axis of young Perth mining executive Declan McKenna.

A man who sees himself as good, and whose friends and girlfriend know him to be good – but who finds himself in two very bad spots. One due to his own actions, the other from the actions of others. One that binds him in personal chains, the other which could see him in handcuffs.

“I didn’t have an ending. I had a number of events that I wanted to weave into it. But none of them were preconceived,” Percy says.

“There are aspects of some cases that I’ve done over the last 40 years which found their way into the book and vaguely, some of them made a lot better than they were in real life,” Percy admits.

“Some of them had to be carefully, inconspicuously concealed. Some of the characters were from real life in parts.

“No one character – apart from the odd magistrate, judge, and members of my own band – are actually real-life characters.

“So I’ve taken a number of aspects of real incidents and real characters, and moulded them into one. And I think it makes the whole thing much more intense.”

The novel is unashamedly, viscerally West Australian. Set at the dawn of the 21st century, the travails of Declan McKenna send the reader on their travels around WA.

Perth’s business, dining and drinking landmarks, along with Cottesloe beach, London Court and Nedlands Rugby Club. To racetracks and restaurants.

And also to Albany and Kalgoorlie – which is where’s Percy’s personal story began, and to some extent, lingers.

The Percy name runs like a gold seam throughout the city’s history.

Percy was born there, and attended Kalgoorlie Central primary school there – while his parents – father Ted and latterly mother Joan, ran the Federal Hotel in Hannan Street from 1951 until 1983.

A place obviously close to the QC’s heart, and a place within the heart of his first foray into fiction.

“We’re all a product of our experiences and you can invent things, but I think to

Percy has written his first novel, set in WA.



“
In all but the most extreme cases, there are redeeming features about everyone”

some extent they all derive from something that happened to you somewhere,” he says.

“I’ve lived in Perth for a very long time but I never, ever consider myself to be Perth person.

“My sense of belonging in Kalgoorlie is very, very strong. All my forebears are buried there. And I think that gives you a very strong connection with the land.”

And some of the people who live on it.

“I think most people who come from the bush have a touch of larrikin and there is more than a touch of larrikin in some of the characters in this book,” Percy says.

“That is not necessarily an endearing characteristic. But it can be and I think people will see some of the characters in the book are quintessentially West Australian country people.”

Percy’s newspaper columns and short stories have been an outlet over the years, a palate cleanser from the day job composing closing arguments for juries, or appeal arguments for judges.

Embarking on a novel was a novel idea,

given Percy was at the time in the bowels of one of Australia’s most lingering murder cases – and an archetypal example of a seemingly good person caught in the most terrible of crimes.

On Australia Day 2009, Bob Chappell disappeared from on board the yacht Four Winds – the yacht he sailed with his de facto partner Sue Neill-Fraser.

A seemingly happy later-life relationship, torn apart by mystery and alleged murder. Despite no body and no weapon, Ms Neill-Fraser was convicted and jailed for at least 23 years.

And after one failed appeal, Percy was drafted in to lead the second – leading to a lot of time in the air, to think and watch.

“I am not a great one for watching movies on planes, and so I used that, having started the book to write chapters at a time,” Percy says.

“I find the aircraft quite stimulating. You see a lot of people, you’ll wonder about them. Who is this person? Where are they going? What are they doing?”

“I’m not one of those people who need silence or a complete vacuum in which to

work. But it did take a long time, though; a lot longer than I thought.

“I thought I could knock it off in three or four months – as it turns out it took three-and-a-half years.”

Many other eyes and ears were called on over the writing journey, including Tom’s partner Jo. Another in his corner was former Supreme Court judge turned award-winning author Nicholas Hasluck.

“Lawyers are in the business of solving puzzles and reducing chaos to a semblance of order,” Hasluck says.

“Novelists, on the other hand, are well-aware that readers are drawn to the dangerous side of things. Tom is skilled in both areas . . . and he provides some valuable insights about legal procedures and moral dilemmas along the way.”

Along the way to a climax which will resonate, particularly with those with memories of a holiday island beloved of West Australians. An ending which Percy let come to him rather than set out to achieve. An entirely different process than in his chambers or in a courtroom.

“I didn’t know where it was going until the end. And that just came to me one day

as to as how the whole thing could come together and wind up sensibly. I didn’t have to ponder that. Because I hadn’t got to that point, I just let the whole thing flow,” Percy says.

“Which is a different discipline to law, because I think you’ve got to know where you want to end up. You’ve got the end product that you want, and that’s where you want to lead someone to.

“Writing a fictional novel gives you the liberty of being able to let it go where it takes you.”

It has already taken Percy to the WACA Ground and the Goldfields to launch. The reaction so far has been overwhelming.

“There’s a couple of retired judges who I always found it very hard to please when they were on the bench, have actually written to me,” Percy says.

“(Former governor) Malcolm McCusker specifically rang me about seven o’clock one morning just to say ‘been up all night reading’.

“I’ve had a film company, they have instigated meetings with me on a couple of occasions, to see what we can do with the story in terms of a TV production.

“And I’ve had feedback from . . . horse trainers. They’ve said they’ve never read a book before in their life. And they said it was fantastic.”

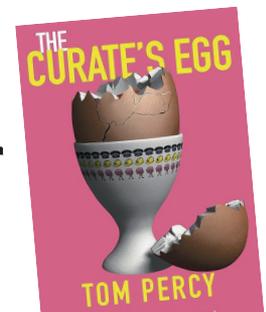
The connection between Percy’s novel and love of horses – as well as plot devices and first-time readers – is staring out from the front cover.

“The publisher said it’s got to leap off the shelf at you. If we are going to do that we might as well go that pink, yellow and blue – which is my father’s racing colours, which I still use nearly 60 years later,” Percy says.

And with a nod to his father on the cover, the inside page is dedicated to his mother Joan, who died in 2013.

“I think she sometimes thought that I had an ability to bend the truth. I’ve always denied that. Who knows – maybe she was right.”

The Curate’s Egg, published by Halstead Press, is available at Dymocks and online.



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Michael Jalaru Torres. *Unipi* from the series *Exif* 2017 (detail). Digital Photographic Print, 86.6 x 130 cm. Courtesy of the artist.